THE

DUBLIN REVIEW

SUMMER 1956

Special Number on

CRIME AND PUNISHMENT

IS PUNISHMENT A CRIME?
Illtud Evans, O.P.

THE CASUISTRY OF CAPITAL PUNISHMENT
Christopher Hollis

OBSCENITY, LITERATURE AND THE LAW
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HOMOSEXUALITY AND THE LAW—
A Catholic Memorandum

LONDON: BURNS & OATES

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All communications, articles and books for review should be addressed to THE DUBLIN REVIEW, 28 Ashley Place, London, S.W.1.

Articles can only be received on the understanding that publication alone is a guarantee of acceptance and payment.

Articles should not be submitted without preliminary correspondence.

THE DUBLIN REVIEW is regularly analysed for the *International Index to Periodicals* (H. W. Wilson & Co., New York).

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EDITORIAL

IN the days of the Lord High Executioner, 'to make the punishment fit the crime' was not only a patently obvious duty but a comparatively simple one. That precocious child, psychology, had not appeared on the stage to raise the question 'What constitutes a crime?' and, having raised this question, to proceed to give an endlessly qualified answer. This Noble Lord was not caught up, as we are, in an endless maze of terminology, of curative measures, of repressive tendencies, of guilt complexes, of rehabilitating, remoralizing, reintegrating methods and systems of reform. We are left wondering whether such a thing as crime exists, whether in fact the only crime that ever has been was to regard certain anti-social acts as 'criminal' and, crime *par excellence*, to punish them, in the fond belief that we were not only doing the right thing but even thereby preventing its happening again. The problem, to say the least, is complex.

By no means the least complex aspect of it affects everyone who professes the Christian faith. Each and every one of us confesses himself to be a sinner. By the very law of charity we must not judge others, yet we have social duties and obligations which we must fulfil. There are acts which are quite obviously in themselves dangerous and which must be prevented. But how are we to deal with persons who commit these acts? In one sense we must not condemn them, for there, but for the grace of God, go I. And yet we must deal with them in a way most likely to promote a situation in which these things cannot happen again. It was thought of old that this was best done by the simple act of punishment. Now we are not sure. In fact, many people are all too sure that that is one way in which not to deal with it. Thus, for example, the supervising psychiatrist of Sing-Sing prison has argued in favour of 'elimination of the question of determining criminal responsibility', urging that 'the concept of management of the anti-social individual should be changed from that of punishment as the main instrument of control to the concept of the anti-social individual as a sick person in need of treatment rather than punishment'. It is the extreme which, pushed to its ultimate conclusion, is summed up in the remark of another

psychiatrist which Fr. Illtud Evans quotes in his article in this current number: 'I have not been able to find one single offender who did not show some sign of mental pathology in his emotions, or in his character, or in his intelligence.' As Miss Barbara Wootton has written in the current number of *The Twentieth Century*: 'Clearly, for those who think like this, there can be no problem of distinguishing offenders with sound, from those with unsound minds, since all are, by definition, sick.'

It is not necessary to elaborate this theme at any greater length to stress the fact that here is a highly complex and pressing problem which it is the duty of all Christians to consider. Insofar as medical science, psychology or psychiatry places at our disposal a more enlightened examination of the causes which motivate human beings and enables us to judge with a greater degree of accuracy the responsibility which the individual can be said to have for the acts which he performs, then our treatment of the offender must be modified in the light of those discoveries. Nevertheless we acknowledge a moral law, a moral obligation, and a right relationship of man created in the image of God, though admittedly corrupted by the fall and by the stigma of original sin; the very fact that we acknowledge and confess ourselves to be sinners means that we accept responsibility for our acts. For our sins we must do penance. We must make expiation. We must form a firm purpose of amendment. And we must do no less for our crimes if we commit them, and our punishment is, in fact, our penance. We see this fact raised to the highest level of all in the remarks of the Holy Father's penetrating and moving address[1] to the Catholic jurists in 1954 which some of the contributors to this issue have quoted and which we have reproduced in part as being one of the most significant documents on this subject to be produced within recent years:

> May all who have fallen under the blows of human justice, suffer the punishment inflicted upon them not simply under duress, not without God and without Christ, not in revolt against God, not spiritually shattered by anguish; but may it open for them the way which leads to holiness.

The pattern of penance, expiation, amendment, and the restitution to a state of grace which comes through the sacraments, is a pattern which by analogy we should make it our duty to work out

[1] Reproduced, by kind permission, from *Catholic Documents, XVII.*

when it comes to terms of human crime and of the punishment due to that crime. We do not want ever to punish for the sake of punishment in itself, but merely because punishment is considered to be the most efficacious way, or at least one of the most efficacious ways, of restoring to the individual a right sense of proportion and of preventing his falling into that state of crime and corruption yet again. If, however, it is one of the rôles of modern psychological research to convince us that certain forms of punishment which apply to certain forms of crime serve not merely to condition the prisoner to a state in which he is not likely to amend but even to encourage him to a state where he is even more likely to commit the same crime, then it is our moral obligation to study all possible methods of reforming and revising our ideas of punishment and the whole system of penology and of prison supervision which that implies.

This number of THE DUBLIN REVIEW, which has set out to discuss the general theme of Crime and Punishment, forms the first of the new series whereby each issue of the REVIEW is to be devoted more or less to the discussion of one specific theme. The second issue for the current year will discuss the theme of *The Church and Education*; treating that subject not merely from the restricted interpretation of the term 'education' as the problems affecting the Catholic schools but as the problem of the whole process of formation of the human being.

A sincere and belated apology must finally be made to all subscribers for the considerable delay which there has been in the appearance of this number, a delay which has been due to unfortunate and unavoidable circumstances. The second issue for 1956 will appear in December.

IS PUNISHMENT A CRIME?

By ILLTUD EVANS, O.P.

THERE is a story—and it happens to be true—of a prisoner, skilled in evasion and ready of speech, whose reply to an exasperated Governor was: 'It's no use blaming me. I'm a schizophrenic. I saw it in my records.' In Freud's centenary year it may seem ungracious to blame the psychologists for a popular view of crime which so largely ignores the sense of moral responsibility; but it is certainly true that the sanctions of punishment were never so misunderstood. This is perhaps the basic problem of criminology today, and no amount of statistical enquiry or sociological research can eliminate the need for a moral judgement which essentially relates to man as made for life in society. He exists for others, and in the end for another whose name is God. His crime—or his punishment—has no meaning unless that be true.

The reaction from a harsh and undeviating penal law was inevitable and indeed necessary. No one any longer would want to justify the sort of savagery which condemned children to death for theft, and there still remain plenty of inconsistencies in the criminal law which reveal little regard for the circumstances which in practice should often modify the application of the law. But the reaction has reached an extreme which virtually identifies crime with psychological illness, so that for instance an American psychiatrist can declare, from a long experience of criminals, 'I have not been able to find one single offender who did not show some sign of mental pathology, in his emotions or in his character or in his intelligence.'[1]

It is scarcely surprising that Dr. Abrahamsen should go on to describe his methods at Sing-Sing prison as 'a modified form of psychoanalytically oriented psychotherapy with interpretations and follow-up questions and group therapy'. For him, as for many psychiatrists, the factors of family, education and environment are

[1] *Who are the Guilty?* By David Abrahamsen, M.D. (Gollancz, 1954.)

a sufficient explanation of the anti-social conduct which is usually called 'crime'. 'Punishment' is in consequence regarded as an obsolete sanction which ignores the unconscious and environmental motives which are far more important than any individual moral responsibility. The whole concept of a necessary imposition of sanctions by society when its rights have been invaded is dismissed, with the ready aid of anthropologists and sociologists, as an obsolete survival of primitive tribal customs, inapplicable to the world we know.

It is, of course, unfair to instance such confident extremes, both of diagnosis and treatment, as representative of the positive achievement of the psychological emphasis of much penal reform. But no science has suffered so grieviously from the indiscriminate popularizing of its findings as has psychology, and the proper qualifications which the psychologist must always make are ignored at what might be called the *Picture Post* level of information. And it is at that level that opinion is increasingly formed: a level of conclusions without arguments, of hypotheses made into new dogmas. There is the further effect of a whole series of recent Hollywood films—of which *Rebel Without a Cause* was the most striking—which have grossly oversimplified the psychological factors of crime. It is always the parents' fault, we are to suppose, and all the crazy mixed-up kids have the psychiatrist's alibis to excuse their crimes.

For the Christian, there must certainly be a clear recognition of the distinction between moral guilt and legal culpability. The moral law is not susceptible of change; its sanctions are rooted in the nature of man, in his obligations towards other men, which in their turn are the reflexion of his obligations towards God. The positive law, which it is the business of the State to preserve and to administer, should confirm the moral law and should never contradict it. But much confusion can arise if judgements which are proper to the tribunal of conscience should be univocally applied to legal offences. In practice this can often happen, and judges in giving sentence have been known to deliver moral lectures which can seem impertinent or irrelevant. The judge has not the evidence to enable him to inspect or to comment on the inner workings of the soul. Ideally there should be no conflict between moral and legal guilt: in practice it must often arise.

But more serious is the rift which increasingly exists between the sense of law as the guarantor of an ordered social life and the

individual's claim to seek and serve his own ends. While it is true that the officially condemned criminal may be morally less culpable than many who have never attracted the attentions of the law, yet we have reached a new and alarming situation when so often the criminal's only conscious concern with the moral order is on his appearance in court to answer to a criminal charge. This may seem an exaggeration, but it would be hard to over-estimate the effect of the breakdown in religious and moral education, which reached its spectacular climax after the war in the great increase in crimes of violence and of sexual assault. If the need for moral discipline and a respect for the rights of others has been so largely ignored, for instance, in family life and in popular education, it is scarcely surprising that crime should be a special problem among young people today. We are witnessing the inevitable result of a general decay in religious values, and the optimistic assumption that natural ethics could be isolated from the religious belief that alone brings them to a fruitful life has been revealed as the fallacy it really is.

In other words a society gets the crime it deserves. But society is only too apt to isolate its criminals, to make of them a scapegoat for its own failure. Perhaps the morbid interest in crime and criminals, of which the immense circulation of the Sunday newspapers is a sufficient proof, is itself a symptom of this general decay. The gangster or the sexual offender, whose discovered delinquencies make the headlines, are not just monsters beyond the pale of the society they belong to: they represent, in an extreme and violent form no doubt, a malady that is far more widespread than that of detectable crime.

The psychologist can do much to interpret the picture. His descriptive work in assessing all the relevant factors of behaviour is of immense value, and his findings may well affect a judgement on an individual's moral responsibility. But his work remains interpretative, though he may establish so serious a state of psychological disturbance that moral culpability may scarcely be said to exist. Short of that, the individual's human responsibility must be respected, and the law should be its safeguard. And punishment, properly regarded, is in fact the declaration of precisely that. It is, one might say, a compliment to a man that he should be capable of being punished. It means that he is human, that he is free, that his actions have consequences and are not the mere conditioned gestures of an irresponsible being.

And in the contemporary discussion of penal reform there is serious confusion as to what punishment is intended to achieve. The reaction against the concept is due often enough to a misunderstanding of its purpose, which is so much more than a painful reward for wrongdoing. The right to punish belongs first of all to God: it is His justice that is infringed whenever wrong is done. His, therefore, the right to vindicate the justice that is His. A proper order demands to be reasserted, and punishment is to begin with the affirmation of the law which has been broken. In the secular order of things, this is not a consideration that is often regarded, but human punishment in its measure must derive its validity from this first principle: that wrong is to be punished because justice demands it. It is a sanction which looks both to the past and to the future: to the past, in the sense that it is retributive; to the future, in the sense that it is remedial.

The reaction against the retributive aspect of punishment has in this country been extreme, and it is intelligible enough. This has been expressed for instance by Lord Asquith in his statement that the theory of retribution, in the sense of expiation for a wrong done, 'is a theory now so discredited that to attack it is to flog a dead horse'.[1]

For while the retributive element of punishment is inherent in the notion of justice itself—it is part of the given order of things—it must be supplemented by the deterrent and remedial elements, which look to the good of the offender. In the last analysis, retribution belongs to God alone ('Vengeance is mine'), and St. Thomas insists[2] that 'in this life penalties should rather be remedial than retributive', the reason being that retribution must ultimately be left to the divine judgement, which alone can assess the gravity of the wrong. Here moral responsibility is always in question, and Sir Leo Page wisely observed that 'to require a judge to determine precisely the degree of pain adequate to expiate moral guilt is patently impossible. No human judges, but God alone, can read the secrets of the heart'.[3]

If, then, the retributive quality of punishment be once accepted, however much in practice its application may be modified, the remedial aspect can be discussed with much greater freedom, for the context of punishment itself will be seen to be

[1] *The Listener*, 11 May 1950, quoted by Fox, *The English Prison and Borstal Systems* (Routledge & Kegan Paul, 1952).
[2] *Summa Theologica*, II–II, 66, vi.
[3] *Crime and the Community*, p. 68.

something objective and beyond the vagaries of fashions of thought or of sentimentality. And there is plenty of evidence that the process of making the punishment fit the criminal can, as in some well-intentioned experiments in 'free' education, lead to a deterioration in the very graces of life—good manners, consideration for others—without which a tolerable social life is scarcely possible. The moral education of children demands the firm assertion of punishment as the necessary corollary of wrongdoing, though at once one recognizes the serious harm done by an arbitrary exercise of authority by parents or teachers, which can defeat the true purpose of punishment as something positive and creative of good.

All that has been suggested so far presupposes that the offender is capable of human acts: you cannot justly punish an imbecile, for he is incapable of acting responsibly and hence of meriting punishment. But there are many degrees of lack of responsibility, ranging from the slight disorientation of a fit of absent-mindedness to the gross disturbances of a serious psychological state. And the law, unless evidence to the contrary be proved, has to assume the responsibility of the offender for his misdeeds and hence for his punishment. But the actual administration of punishment, concerned as it essentially is with the reform of the wrongdoer, will take into account the individual's needs. It is here, and wholly without prejudice to the basic sense of punishment as declaratory of a right order that has been invaded, that the necessarily remedial quality of punishment will be revealed.

The penal reforms of recent years have increasingly laid emphasis on this need to make punishment constructive and directed to the offender's rehabilitation. Thus the Criminal Justice Act of 1948 explicitly relates sentences of imprisonment to the preparation of the prisoner for a useful life on his release.[1] The practical difficulties involved in implementing the Act are immense, but the Prison Commissioners, whose activities seem only to attract attention when things go wrong, are gradually establishing a framework for true rehabilitation. In particular, the notable success of the 'open' and training prisons proves that it is in this direction that reform must be. It was the achievement of

[1] For a valuable discussion of the present prison system, see the report of the debate in the House of Lords on 4 May 1955, on a motion introduced by Lord Pakenham (*Hansard*, House of Lords, Vol. 192, No. 52).

the Borstal system to insist on training as an essential feature of any sane process of punishment, and by this the principle is established that, apart from recidivists (now, at least in theory, provided for by sentences of 'preventive detention'), prisoners should engage in profitable work. Payment for work is still absurdly inadequate, and a further reform of some urgency would seem to be the establishment of rates of pay which would enable the prisoner to save money and to make restitution for his offences against the community, which almost always involve property. This latter proposal, often resisted and in any case made impossible in the present situation of largely profitless work, would do much to underline an indispensable feature of any true punishment, namely the repairing through the offender's own efforts of the injustice which his crime has involved. The forthcoming provision, under the 1948 Act, of a special institution for the detention of offenders needing psychological treatment, will also do something to meet the remedial needs of those whose responsibility has at least to some extent been diminished. And the increasing use of probation, and the growing awareness of the importance of after-care, alike indicate that punishment is now realized as meaning much more than the crude imposition of a prison sentence—a mere locking-up to keep undesirables out of circulation.

The Church has always had a special interest in the needs of prisoners. From the time of St. Peter (or, indeed, of St. John the Baptist) she might be said to have a proprietary concern about prisons. Certainly she is plentifully represented in them. The petitions in the Litanies for the good estate of prisoners are more than an appeal for pity. There is a sense in which the condemned are fortunate: they are doing penance for their wrongs, and most of them know that this is just. In his address to the Catholic Jurists of Italy on 5 December 1954,[1] the present Pope has insisted on the deeper meaning of punishment and has placed it firmly in the religious context to which it must ultimately belong: 'The religious element in the meting out of punishment finds its expression and realization in the person of the guilty one, in so far as he humbles himself under the hand of God Who is punishing him through the instrumentality of men: thus he is accepting his sufferings from God, offering them to God as a partial payment of the debt which he has contracted before God. . . . May all who

[1] See below, pp. 66 et seqq.

have fallen under the blows of human justice, suffer the punishment inflicted upon them not simply as under duress, not without God and without Christ, not in revolt against God, not spiritually shattered by anguish; but may it open for them the way which leads to holiness.'

Such a concept of punishment, in which its essential function in indicating the rights of society is allied to the religious renewal it should inspire, is doubtless far removed from what the penologists usually mean by the term. But nothing less than this can be enough for the Christian, who sees the redeeming work of Christ in all the occasions of life—and not least in the lot of the sinner who is sorry for his sin and of the criminal who is undergoing punishment for his crime. The work of Catholic chaplains and prison visitors takes on its true meaning here. They are not concerned with legal punishment as such, but they are concerned with the lot of their brethren in Christ to whom often in the truest sense a work of reparation is entrusted. That is why Catholics should have a conscience about crime—and punishment. No amount of progress in the diagnosis of the causes of crime or in the treatment of the criminal can be a substitute for the radical sense of punishment as a providential part of God's mercy. It is for Catholics indeed to lead in demanding that punishment should be inspired by the religious and moral elements of reparation and reform without which it can simply be a negative and legalized act of cruelty. But this must be without sentimentality, without concessions to the humane suspicion of punishment as such which has grown out of a decline in the religious values which it truly presupposes.

Thus it is that the Pope urges a real obligation 'not only on those who have the immediate care of the condemned person, but also on the community itself, of which he is and remains a member. The community should see to it that it is disposed to welcome lovingly the man who comes forth from prison to freedom. This love should not be blind but clearsighted, and, at the same time, sincere, helpful and discreet, such as to make possible his readaptation to social life, and a renewed consciousness of himself as free from guilt and punishment'.

Thus it is that for the community at large the problem of punishment is most usually the problem of what happens when legal punishment is over. It is here that Catholics should be to the fore in welcoming the discharged prisoner or the Borstal boy or girl on

licence, not condescendingly but with the charity that recognizes them as free now from the condemnation their crimes have deserved. Crime deserves punishment indeed, but punishment that has been undergone as part of a justice that is allied to mercy—and that must always be so for a Christian conscience—is itself a title to all our sympathy and acceptance of one of those with whom Christ identifies Himself—to be loved and served for His sake. So it is that 'after-care' becomes much more than a statutory affair: it is the affirmation of charity—a virtue that necessarily is expressed in those works of mercy, which on the last day will be our credentials, the evidence on which all will be judged.

AFTER-CARE

By MICHAEL GREGORY

OFTEN enough the discharged prisoner, whether he be a first offender or a recidivist, greets freedom with good intentions. A great number it is recognized leave prison with designs on society which are mainly bad, and this is a problem in itself which demands a fundamental revision of our prison system. What is more alarming, however, is that there exists the acute problem of the well-intentioned discharged prisoner—the general problem of rehabilitating a man who has the scar of criminal conviction, and the particular problem of keeping alive the while the wholesome intentions in his bosom. There is a double attraction in this man trying to make good, firstly the attractive hope that a sometime social enemy may become an ally, and secondly the human attraction of the Dismas and the Mary Magdalene. Yet what faces us is that there is no adequate system in Britain for tackling the engaging problem this man presents, and although an effective organization exists for giving some 'aid on discharge' to all prisoners, there is no satisfactory national system for attending to their after-care or aimed at preventing their reversion to crime. The societies, Welfare Officers, committees and individuals which do tackle this further work are restricted in their scope and for the most part lack opportunities and financial facilities. Normally the 'aid on discharge', it seems, is the offer of no more than a dole of a few shillings (the maximum by statute is £2) accompanied by a word of advice.

Our good-intentioned prisoner leaving behind him the day-long care of the Home Office, and facing a new life free from 'care', is often enough a man weak in character, that is to say, easily led —forwards or backwards. In the eyes of society he is an ex-criminal and prospectively a future criminal. If he steps away from prison, as many do, with no home or family, no work or accommodation to go to, with no clothes save what he is presently

wearing and with but a few shillings and a railway ticket in his pocket, he is stepping against a stream tending to draw him back to crime. He faces the problems of insufficient money for decent lodgings; landladies who require rent in advance; employers who do not employ ex-prisoners; employment in which no wage packet is due for a week, or worse, in which the first week's wages are retained until the end of the employment; the difficulty of obtaining National Assistance without an address; an unstamped National Insurance Card; possibly unseasonal clothing; possibly no suitcase or any other token of trustworthiness; and withal a mind unpractised in making decisions or thinking ahead. If he is unfortunate enough to be discharged on a Saturday his difficulties are intensified; and his record and fame may be such that he must be careful to avoid arrest as a 'suspected person' under section 4 of the Vagrancy Act, 1824.

His danger is that his spirit of goodwill is to be attacked by difficulties and disappointments, mistakes and loneliness. In hostels he may be tempted by undesirable associates, in seeking friendship he may be led backwards. At length his spirit may be defeated by despair.

There is, of course, no sure way of saving this ex-prisoner, but the aim should be to foster his good motives by giving him practical help with a sympathetic interest in him as an individual, and by giving the friendly encouragement a striving man needs. To a great extent this has been recognized by the Home Office Committee on Discharged Prisoners' Aid Societies (under Sir Alexander Maxwell) who recommended in June 1953 that Aid Societies should develop an interest in 'after-care' beyond the giving of 'aid on discharge'. In a small way some of this committee's recommendations are being implemented. At present the work of a few local Aid Societies is being adapted by the appointment in the prisons of Birmingham, Bristol, Liverpool and Winchester of Prison Welfare Officers, who are charged with selecting prisoners considered amenable to after-care, and submitting to the Aid Societies concerned case histories of these prisoners with recommendations for after-care. The Welfare Officers of the Aid Societies in their turn will be responsible for attempting such after-care as is approved by their Society. This is an experimental scheme, and it may be that this small start may lead to an enveloping system of after-care replacing the present method of dealing with discharged prisoners; but it is difficult to conceive of the Aid

Societies abandoning their long accustomed approach and breaking the habit of giving, for the most part, dole and formal advice.

What is required, it is suggested, is the taking of a lasting personal interest in the ex-prisoner, based on charity, such as is achieved by the successful Probation Officers with their charges. This would not come from committees, officials, dole distributors, but is achievable by Welfare Officers attached to the societies, and possibly unattached individuals. While the after-care of prisoners is primarily entrusted to desk officials and committees only a limited progress in the work is conceivable. But if success on a wide scale is to be achieved in rehabilitating ex-prisoners, as envisaged by the Maxwell Committee, it will be achieved by personal interest in the ex-prisoner.

The stumbling block, as St. Vincent de Paul would point out, is that the help must be based on friendship, because as the saint remarked, the needy will never forgive you the help you give them unless they feel you love them.

The Maxwell Committee recommends after-care for 'selected cases' 'picked out' by the Prison Welfare Officer—for our well-intentioned prisoner. Going back a stage, however, it is suggested that the object should be not to pick out prisoners, but to increase to the greatest possible extent the proportion of those who leave prison with hope and the determination to lead a straight new life, by leading them to look forward to this end from the beginning of their sentences.

TOWARDS A NEW CONCEPTION OF PENOLOGY

By JOSEPH VERNET, S.J.

IT is intended in this article to show new and recent tendencies which are taking place in penology and penal reform:

In their moral and juridical basis,
In their beneficial applications,
In their international extensions.

PART I

JUSTIFICATION OF INDIVIDUAL PUNISHMENT

Addressing the members of the Fifth Congress of the Union of Catholic Jurists of Italy, the Pope declared:

> Connected with the concept of the criminal act is the concept that the author of the act becomes deserving of punishment. The problem of punishment has its beginning, in an individual case, at the moment in which a man becomes a criminal. The punishment is the reaction, required by law and justice, to the crime: they are alike a blow and a counter-blow. The order violated by the criminal act demands the restoration and re-establishment of the equilibrium which has been disturbed. It is the proper task of law and justice to guard and preserve the harmony between duty on the one hand and the law on the other, and to re-establish this harmony if it has been injured. The punishment in itself touches not the criminal act but the author of it, his person, his ego, which, with conscious determination, has performed the criminal act. Likewise, the punishment does not proceed, as it were, from an abstract juridical ordinance but from the concrete person invested with legitimate authority. As the criminal act, so also the punishment opposes person to person.

These ideas need some development and explanation.

1. *The Idea of Punishment*

(A) A crime has been committed. The criminal is charged with it and held responsible. His offence is imputed to him: one might go even further, he is reproached for a moral fault. From this there springs the idea of punishment, of a sanction, retribution, reparation of the fault, and, for those who can attain to those heights, the idea of an expiation and of redemption.

This repressive idea of punishment, in accordance with an elementary sense of justice and of that notion of good and evil of which all men have a common conscience, has an indisputable value, as the Pope declares in the address which we have already quoted. To attempt to eradicate it completely, or merely to tone it down, would be in contradiction to the very idea of punishment.

Even in juvenile courts, whilst all possible measures for their re-education should be taken, everything must be done to present to the offenders these measures as the sanction due to their offence, without in any way devaluating in their sight the character and the nature of punishment which is essential for the safeguarding of that concept which they have of justice, of responsibility, and of retribution for their act.

(B) If one places oneself in the point of view of society, there is a second point which should not be overlooked.

A crime represents a danger, and therefore it must be prevented. Society should, therefore, intervene in order to intimidate the guilty (in the strict sense of intimidation) in order that the criminals will not do it again, and to warn those who are tempted against the possibility of imitating these criminal acts. Punishment may therefore have a salutary effect as a warning and a corrective example.

That, then, is the theory. But, in practice, what if one places oneself in the position not of society but of the offender or the delinquent?

(*a*) Delinquents, in the vast majority, are quite incapable of finding in punishment the least sense of the re-establishing of an order, still less to give to the sanction due to their punishment a value which can be described as an expiation. They hold fast to the idea of a payment: 'I paid the price, therefore I am clear of my debt to society. We are quits.' This is a kind of give-and-take attitude, a kind of retaliation, but it is not very effective, and certainly in no way formative. If we take the case of the old lags, the

habitual offenders, punishment for them is a risk which they take into account but which they evaluate as being a minimal thing; and they can find no proportion between the sanction of one infraction of the law and the advantages which they derive from all their undiscovered and therefore unpunished offences. The inconvenience of a few months in prison seems to them to be quite out of all relation to the advantages of their felonious life successively pursued.

(*b*) Here we encounter the character of intimidation which society wishes to associate with the idea of punishment. From the point of view of these delinquents, certain as we have just explained, are never aware of punishment as anything other than an absurd accident when considered in relation to the ensemble of hidden offences which they have really committed but which have remained undetected. Some of the other offenders are quite incapable of being intimidated, either because of some congenital weakness of temperament, some lack of sensitivity, or from impulsiveness, or from their vanity and presumption. That is why, without denying the value of punishment as a deterrent, it must always be recognized that this value varies, for no one reacts always in the same way or in a constant manner to any given situation. It might be said, therefore, that the Press and news contribute much less by way of example and deterrents than they do by spreading by means of their smug reports bad specimens of crimes which it might be possible to commit.

We can therefore conclude this first point on the notion of punishment by saying that if it is justified in theory from the abstract nature of man to society, in practice, the individual conditions of offenders, and the actual conditions under which punishment is meted out, deprive it of much of its effectiveness in re-establishing the values of justice. A *simpliste* idea of retribution, therefore, can often lead to a mere caricature of what penal justice ought to be.

Nothing can appear more unjust than the pronouncing of a sentence which has taken no account of the conditions and the circumstances of the offence. Nothing can appear more inhuman than the strict application of a ready-reckoner system of established punishments which bears no regard to the guilty person. As Mlle Yvonne Marx, the secretary of the French Society for Penal Reform, has so judiciously remarked: 'The legal code should start

from the offence, but justice must start from the offender.' We must now examine exactly how this might take place.

2. *Repressive and Curative Measures*

This problem was stated as follows by Pope Pius XII in the discourse from which we have already quoted:

> Some have manifested the desire that by means of legislation some relaxation be introduced of the obligation which binds the judge to the articles of the penal code . . . in the sense of a freer evaluation of the objective facts over and above the general juridical limits set by legislative authority. Thus, even in penal law, a kind of *analogia juris* would be applicable, and the discretional power of the judge would be extended beyond the limits hitherto accepted as valid.

And the Holy Father concludes: 'In any case the ends which this proposition has in view, namely, the simplification of the norms of law, the prominence given not only to strict formal law but also to equity and spontaneous good judgement, the better adaptation of penal law to popular sentiment: these ends, we say, are not open to objection.'

The difficulties spring, in effect, much less from the theoretical side than from the practical side and its application. On the one hand the guarantee of security must be preserved, and on the other hand there must be some adaptation to the individual case of each prisoner in a prudent and reasonable attempt to bring about his reform.

As Dr. Marc Ancel, the President of the International Society of Criminology, has so well put it: 'The real problem lies in how to adapt justice, that is to say, a system of penal law, of a process of prosecution and judgement, and of a criminal jurisdiction (which was founded in the past on the sole consideration of an objective fact, confined juridically) to the consideration of the individual personality and of each particular human fact which cannot be confined to the mere categories of a strict law.

'To regard a crime as the anti-social expression of a human personality, whom one must force to recognize and to fulfil his own personal dignity as a man, is to set oneself up in opposition to any inhuman automatism of some out-dated classic theory of repression; it is to oppose at the same time any fatalism, equally inhuman, of a determinist positivism which leaves no real or profound chance of redemption for this human being, from whom, by

means of the system, one has in some way stripped the true consciousness of being a man.'

We must therefore examine what measures a penology which might truly be described as educative and re-socializing might contribute to this end.

Part II

THE APPLICATION OF EDUCATIVE AND RESOCIALIZING MEASURES

One could quote many cases where justice, leaving aside the many cases of juvenile delinquents, has been applied to the personal problems of the condemned prisoners in order to educate them and make them capable of living in society. We might examine how this has been achieved in France since 1950.

1. *Centres of Observation and Re-orientation*

In the first place it is necessary to know the offenders in order to be able to judge, to treat, and to re-classify them.

The aim of the *Centre National de Orientation* (C.N.O.) is to discover the dispositions and talents of each prisoner and to establish a satisfactory case history. For the first time ever in the French prison system attention is now being paid to the professional re-orientation of the prisoners. For some years, juvenile delinquents have benefited from similar experiments, but nothing had been organized scientifically for adults. Founded in August 1950, the C.N.O. has already dealt with nearly 5000 condemned people. These have come from all parts of France in groups of about one hundred and twenty for a stay of some six weeks' duration. They are submitted to medical, psychiatric, psychological, and psychotechnical examinations, and their files contain enquiries into their social and family background.

Thus it becomes imperative to deal with the condemned people in the light of their capacities and their interests instead of treating them, as hitherto, merely in view of the nature of the punishment itself due to their crime and in the opinions of the staff who supervise their activities. These more varied and objective observations are directed towards the investigation of the personality of each individual, relating it into one whole and taking into account:

his physical state;

his psychological state and the elements of his character and make-up;
his professional aptitudes;
his social dispositions.

This ensemble of observations enables a speedy decision to be made concerning certain prisoners who are obviously sick in one sense or another, and who can be sent to prison sanatoria—such as those who are tuberculous, asthmatic, epileptic—or, in the case of those who are lunatic or senile, to prison asylums. Further detailed and advanced examinations also enable the authorities to separate out the malingerers.

But yet further still the examinations and the tests are directed towards a professional selecting and orientating of normal subjects. This implies a period of detention which extends over a certain length of time, and that is why only those who have received criminal sentences of more than three years' penal servitude or hard labour are taken to the C.N.O., since even during a period of concentrated apprenticeship it would be difficult in too short a time to teach anyone a trade, and how to exercise it within the appropriate social class to which he will return.

At the end of the period of training, a commission meets under the presidency of a magistrate which enables the discussion of each case to be conducted between doctors and specialists plus a number of qualified members of the prison staff. This is a new move which gives excellent guarantees of competence and impartiality in the judging of the subjects and in orientating them successfully towards different professional centres where their further formation might be pursued.

2. *Educational and Professional Centres*

A great number of different kinds of trainings take place either in prison schools for the youngest offenders (that is, up to twenty-five years of age) or in short intensive courses of formation for those whose release is immiment, or yet again in reform homes for the others, and especially for those who have been condemned to hard labour. The diversity of these centres, newly created, corresponds to the diversity of the cases. In effect, the age of the offenders, their past record, the length of their sentence, are the conditions which make it necessary to differentiate the regimes under which they are treated.

Nevertheless, in all these establishments it is necessary to complete the instruction since, for the most part of the inmates, a supplementary course or a re-calling of the earlier education which they have received often proves necessary if they are to be in the least degree capable of following with profit a more technical course.

At the same time, an attempt is made to instil some principles of moral rehabilitation into them, and by means of their work to restore to them some idea of duty and a certain social sense. From this there has sprung the rôle of teachers or instructors who have been duly introduced to the official prison staffs. During the period of isolation which precedes actual admission to a workshop or training establishment, these instructors are charged with that general re-education, both intellectual and moral, which should guarantee for each inmate a stimulating and graded course of instruction.

After eight to twelve months the apprenticeship proper begins in a factory, and the preparation for technical examinations is made under the supervision of qualified instructors. But in order to be truly formative a re-education is not merely concerned with developing a talent, an ability, or a technique, or even merely with a degree of instruction which the pupil is capable of assimilating; it should also form good habits and develop convictions which are capable of bringing about the moral rehabilitation of the offenders. From the moment of admission to the reform school use can be made of the mere fact of the time-table and of the discipline of the regime in force. It is desirable that all this should be derived from the conditions of free workers: early rising, continuous and graded occupations, a healthy but frugal regime. Is not the best preparation for a return to society the practising in advance of the conditions of work and of regularity which the offenders will encounter there? Yet even so, how can we hope for the social re-integration of the habitual offenders, to redeem and reform their lives and to work it out in the course of time without sufficient effort on their behalf and without due care? Work, provided it is formative and remunerative, can most effectively prepare for the future and make easier the resuming of normal life when the prisoner is discharged. It enables him to acquire a trade; it develops his conscience; it gives him a social spirit of mutual help and understanding. Nevertheless, work by itself does not suffice to bring about a complete process of renewal. There must

also be a human, man-to-man activity and the revealing to the offender of those possibilities of value *qua* person which lie in him. That is the task of the teacher and the instructor.

This involves an entirely new method in prison reform which, abandoning general regulations or collective methods, concerns itself with the person of each individual prisoner. The teacher places himself at their level, gives them the necessary lessons, offers them suitable reading matter and conversational topics, observes their reactions, corrects them when necessary, and sometimes receives their confidences—and constantly endeavours to give them a sense of, and a desire for, a new life. The man who is charged with the reforming each year of the mentality of at least a score of outcasts who would seem to have nothing left to expect from life and who, thanks to him, rediscover something and give their co-operative consent to it, is a man charged indeed with a privileged and unique rôle to perform. We find there one of the most praiseworthy innovations in modern penology, and one of the most promising precisely because it is one of the most human.

It is yet too soon to give results in terms of figures which would be considered a trifle premature. But a threefold criterion might already indicate the aptness of this re-classification of the criminals treated in this way:

their *professional qualification*—more than two-thirds have passed their examinations, a proportion much higher than that of other schools;

their *psycho-social adaptation*: in these professional centres of training one notices a much more normal relationship between the prisoners, a more frank degree of comradeship, a higher degree of mutual co-operation than one does in other prisons;

their *perseverance* in their new state: we cannot as yet judge this result because we lack the necessary follow-up information but we can, for all that, remain optimistic in view of the highly satisfactory results developed in the course of the stages which lead to the complete liberation of the prisoner, which stages remain to be considered.

3. *Centres of progressive resocialization*

Up to this point, the process of social re-classification tends above all to give to the offender a degree of useful utilitarian knowledge (professional instruction and formation) and of necessary moral conviction thanks to the education and the moral formation

which is received in these aforementioned centres. But before the prisoner is actually set free he must be brought to grips with the conditions of actual life and with the difficulties of working. In this way it will be possible to study his personal reactions and to guide them by different methods of approach towards a life of freedom. According to the results of these experiences in open prisons, he will be capable of readjusting himself more or less quickly to a degree of conditional freedom and to train himself to be worthy of a normal return to society. Amongst these transitory stages between complete imprisonment and complete freedom we would mention the external annexes from prisons and the open prisons, or, as they are known in France, the 'Homes'.

The annexes to the prisons are under the supervision of the ordinary prison authorities with certain hours of labour during which the prisoner is outside that authority, but he remains restricted to the discipline of the common regime. In the Homes, the offenders are merely looked after and controlled during the night and on holidays. During the day, however, they work at private schemes or enterprises in which they have been placed and where they are treated quite normally as apprentices. They thus rediscover a normal life, with its actual working conditions, of companionship and of human relations. The future of these prospective members of society cannot evidently be decided in a mere six or eight months during which they are protected from all possible temptation and in which they might feel that the slightest misdemeanour might possibly retard their being set free. Nevertheless, thanks to the supervision which is exercised and to the control of their conduct, as much as to the conditions demanded by their work of regularity, of economy, of sobriety, of good companionship, each of them can take advantage of the opportunity to become completely master of himself and to develop a social sense with regard to his fellow men.

It is not an easy test, quite contrary to that which they first imagine when they are introduced to this change in their regime. After the first enthusiasm of feeling that they are free once more in the streets, and are treated in their workshops exactly as others, they soon come to realize certain comparisons: their fellow-workmen go home every night, whereas they have to return to prison; they have to refuse invitations; they have to disguise their status as actual prisoners, they have to find excuses for their behaviour; they are forbidden alcohol, they must give an account of all their

expenditure, and they must also explain the length of their absences or of any period which they spend away from their actual work. In short, there is a real test of will and of behaviour. The prisoner who triumphs over this situation can be said to inspire the greatest possible hopes for his complete amendment of life and for his future return to society.

This experience is as yet too recent, and the number of annexes and of Homes too restricted, to permit a definite judgement to be made of the method and its results. Nevertheless, one might say that up to now there have been few disappointments but many great satisfactions, and that, it might be added, in many different regions of France which are marked by differences of mentality, of habits, and of working conditions. The reports submitted by employers all agree in praising the application of these prisoners to their work (far superior, on the whole, to those of other workers) and also their morals and their conscientiousness. It not infrequently happens that they are actually employed in the same place on their liberation, which is a proof of the degree to which their work has been appreciated. During this period of semi-liberty there has been no evidence on the part of these former great criminals of attempts to escape, of malicious workings against their companions, or of the formation of gangs.

To quote a few figures. In one large town in the south of France eighty-nine prisoners were placed in a state of semi-liberty between 1951 and 1955. Amongst these, two had been condemned to death, twelve to hard labour for life, and seventy-five others also had varying sentences of hard labour. The choice of prisoners was not, therefore, particularly promising, especially when one considers further the crimes for which they had been sentenced:

forty had been condemned for homicide or attempted homicide;

thirty-seven for robbery with violence;

twelve for sexual assaults.

But of these eighty-nine cases only one had to be sent back to prison; another died, and there were only six punishments during the course of four years.

A similar degree of success could be discovered amongst two hundred and forty who have been discharged from a centre of semi-liberty in the eastern region of France. Nearly all were able to return to a normal life in society. One might see, therefore, the advantage of a period of conditional freedom which, established

according to a regular routine in order to sanction the efforts and the good conduct of those who are granted this period of semi-liberty, might offer a kind of apprenticeship for full freedom and for a progressive resocialization of those subjects who have never previously made the effort to free themselves or to adapt themselves to the vital conditions of society in which they live.

Those, then, are the normal and desirable stages of re-classification and resocialization. We have followed them according to the chronological order of the penitentiary situations which coincide, it should be noted, with the logical order concerned with the normal progress which is proposed to each individual prisoner. On this correspondence between the administrative institutions and the individual prisoner depends the flourishing of the process which, starting from the position of an offender who has been rejected by society, tends towards making him a being desirable of re-entry into society and capable of finding his own level in it. Although the work is sometimes necessarily long, always delicate, frequently difficult and deceptive, one might say that it is one of the greatest tributes to modern penology to have conceived of this scheme and to practise it without ever yielding to despair or a sense of hopelessness. It is from such efforts as have been made and have been realized that there springs a renewal of confidence in each man for his personal amelioration. It is the Holy Father who once more underlines this in his address: 'It is true that many prisoners can be and are helped to attain complete inward release, and for these especially, no Christian effort will ever be too much or too difficult.'

It is the wholehearted ambition of contemporary penology to arrive at that conclusion by means of individual methods; it is the wholehearted ideal of Christian redemption to bring it about through hope and in charity.

Part III

A PROGRAMME FOR THE EXTENSION OF MODERN PENOLOGY

The new spirit which is trying to adapt personal measures to the treatment of delinquents in order to restore them and to rehabilitate them to a better way of life has already inspired new

laws in certain countries and in others has promoted certain practical experiments which can be said to precede the actual reform of the penal law. Since most countries have adopted the distinction between juvenile delinquents and adults and devised a system of judging them accordingly, and have tended towards measures which will rescue them for a truly beneficial life in society, all penal reforms have tended in that direction. The transformation of the French legislature has been complete since the law of 22 July 1912, up to the decrees of 2 February 1945, which was further completed and augmented by the decree of May 1951.

Article 2 of the decree of 2 February 1945, stipulates that the tribunals for juniors, the only one up to that hitherto competent to pronounce on the case of a minor of less than eighteen years of age, shall also pronounce 'measures of protection, of assistance, of supervision or of reform' which shall seem appropriate.

Articles 15 and 16 make the following distinction between the minor who is above or below the age of thirteen.

(*a*) A minor of thirteen years of age or less: the child shall be restored to his parents, to his tutor, to a person who is his guardian, or to a person worthy of confidence; he shall be submitted to a kind of work or occupation especially adapted to this effect; he shall be placed in an appropriate kind of institution; he shall be placed under public assistance; he might be placed in an establishment or institution which can be described as of educational or professional formation, or under the care of a medico-pedagogic institute administered either by the State or by some form of public authority.

(*b*) A minor of more than thirteen years of age: he should be restored to his family; restored to the form of work which is specially adapted to him; shall be returned to his family under certain supervised conditions of liberty; shall be placed in an establishment or institution or of professional formation, or under the care of a medico-pedagogic institute administered by the State or by a public body; shall be placed in a public institution of professional education or of supervised education or of collective education.

Article 19: In all cases in which it is decided that a measure of assistance or supervision, of education, or of reform, is necessary, the tribunal has the power to decide that the minor shall be placed, up to an age which shall not exceed twenty-one years, under the regime of supervised freedom. It might also, before making a final judgment, order a period of supervised freedom for a certain specific length of time in order that, as a result of this experiment of one or more periods of trial, the length of supervision can be more adequately determined.

Furthermore, there also exists a whole series of projects in the reform of the law which we will merely enumerate here and which are already applied in certain countries.

A project to extend the age of minority in the penal sense beyond eighteen years so that observations both biological and psychological which have already been made and which show a certain retard of maturity in the majority of the offenders can be applied more fruitfully.

That short terms of imprisonment should be entirely suppressed and replaced by appropriate fines proportioned to the resources of each offender in order to avoid, especially amongst the young, promiscuity and the unfortunate stigma which attaches to a prison sentence.

With the same end in view, there should be greater leniency in the present ordering to disciplinary battalions of young offenders who are due for military service.

When it comes to the case of adults, a similar spirit has inspired new initiatives amongst those which we have already cited:

A period of *probation* or a trial period of freedom under the control of certain magistrates specifically charged with the execution of the sentence or under the control of some organization specially charged with this kind of work.

A certain period of *suspension* before the actual pronouncing of sentence in order to stimulate the goodwill of those who have merely suffered from a moment of weakness without in any way presenting a dangerous threat to society.

On the contrary, according to the spirit of the *Défense Sociale*, various other projects are also in preparation:

For lunatics and the abnormal cases who should neither be confounded nor mixed up with the occasional offender but put into special establishments.

For the alcoholics who, according to the nature of their case, should either be punished or treated by prolonging a post-cure following their disintoxication.

For drug addicts, by taking similar measures, especially with regard to their accomplices, in order that they shall not return to their form of addiction.

This brief summary of measures of security and of treatment which we have already seen indicates the tendency of the legal reformer to make the punishment conform to the individual

according to the nature of the offence, the age of the offender, and his dispositions.

Finally, we might add that for those who are drawing near the end of their sentence the same desire to take into consideration the character and personality of the subject rather than his offence and his condemnation has led to two important innovations:

The *forbidding of visits* has been made less strict: it is no longer applied in an automatic way to certain specific categories of offences but is only ordered at the express command of the judge, and even although it has been ordered it still depends on the magistrate who has been charged with the execution of the sentence, who might lift the ban if, after certain social reports, he is satisfied that the offender has the ability to live honestly and to work conscientiously under the control of a committee either of assistance or of supervision in the locality which he has chosen to live in after he has been set free.

A *period of conditional liberation* has been extended in application which, after all, is only logical if one understands at what point those stages which we have been describing permit a better understanding of the subject and his re-directing towards freedom and the enabling of his reclassification in society.

But here, in order to crown the success of the very fruitful initiatives of modern penology, certain new kinds of institutions have become necessary.

Centres of classification

The final stages in the work of restoring an offender to society are very often either neglected or completely overlooked. And yet there would be little use in all the efforts which have been spent up to this stage without these final measures, and all the millions of pounds which might be spent on the professional formation of the prisoners prior to their liberation might well rest entirely unproductive if one has failed to assure for the people being set free some kind of work for which they have so long been prepared. It must not be forgotten that, normally, when a prisoner sees the gate of the prison opening before him he also so frequently sees all other gates closing before him, and what a degree of deception he might undergo when he has hoped for so much from a new life for which he has been prepared and of which he has been made worthy. What a degree of discouragement after so much care and application has been expended by him in order to learn a new trade to find that when he has been set free he cannot exercise it.

The bitterness and the despair which might overcome the liberated prisoner at that point might well lead him to even worse extremities of crime than he has hitherto committed. There should therefore exist a kind of labour exchange specially reserved and adapted to the needs of ex-prisoners, depending on the Ministry of Labour but remaining in liaison with the Ministry of Justice. This office, or exchange, will especially justify itself when it is in a position to give in advance certain indications and suggestions which will be helpful in orientating the training of the prisoners in order that they shall be able to pursue in the future certain trades which they prefer or in which they are better able to specialize. Finally, it will take into its care from the moment in which they are discharged from prison those who have completed a certain kind of professional formation and will endeavour to find them a situation and an employment in which they can exercise this special kind of training. This organization, thanks to the precise information which will be at its disposal, will thus permit for a more efficient and judicious placing of the prisoners into the new social context to which they must return. They can also the more easily apply for a special privilege to transport free of charge the prisoner, from the moment of his discharge from prison, to a place at which he will be able to take up his employment after giving him his certificate of release and of efficiency in that kind of work which has enabled his conditional liberation. One such centre, set up more than ten years ago, has already reclassified and followed up more than 16,000 people who have left prison. Its utility and its effectiveness have proved to be of such importance that this experimental labour exchange, which was merely tried in one of the capital cities, was soon necessarily extended throughout the whole area of the country. It was a rapid and unlooked-for extension, which proves exactly how important and necessary these kinds of labour exchanges are.

For all that, the mere placing of a prisoner in a job is not sufficient unless at the same time something can be done to guarantee his restoration to a definite social context. Most of those who leave prison are weak and unadapted either because of their moral weaknesses (and the very fact of their delinquency is a proof of that) or by their social lack of adaptation (and sometimes long months spent in close imprisonment will have intensified and aggravated that lack of adaptation). It is therefore opportune to

prolong the period of amendment of treatment and of the actual placing of these ex-prisoners by a kind of post-period of tutorship, or what might be described as a post-cure. For these prisoners, in point of fact, a definite reclassification will seem much less a question of morality than a question of weakness or fragility. They have had time to reflect on this condition and to attempt to do something about it. Especially those who have been condemned to long sentences and who are neither professional criminals nor recidivists of an inveterate kind desire above all to find once more a definite way of normal life. But they must be sustained in their resolutions, which are generally good in themselves, and they must be helped in their situation, which remains peculiarly difficult during the first months of their freedom.

Reports of the employers actually involved in these situations all agree in recognizing the honesty of the prisoners and in praising their fervour and their application to work. The only delicate issue remains in their fundamental instability of character. If they are faced with an argument between their companions in a prison annexe, for example, or are reprimanded by a colleague, or suffer some kind of worry or family trouble, these inadapted, high-powered, emotional, violent or anxious, temperaments fail to meet up to the challenge. They seem quite incapable of coping with the intense emotions which agitate them or with any kind of personal affront which hurts them. Very often, without any reflexion and in a fit of temper, they leave everything, abandon their situation, and have no thought for the future merely in order to follow the impulse of the moment, and by the same reaction, of course, they lose their possible chances of being reclassified and restored to society. That is why they must be helped to make the most of this final step which should free them above all from the weaknesses of their own character, and this can best be done by the supervision of some assistance and of mutual confidence based on the desire to understand them, on bonds of firm friendship and goodwill which must be maintained ceaselessly and applied whenever the need arises.

It will depend on the legislators to decide whether this period of tutelage should become obligatory or not, whether it should be prolonged during a period, say, equivalent to one-half of the period of the sentence, or whether it should be exercised in exactly the same way for first offenders as for recidivists, for young people as for the more adult or aged, and also, whether it should be made

to depend exclusively on a State organization or on private charitable organizations and within an administrative framework to what degree it should accept and even encourage certain aid from benefactors. Those are briefly the details of the means of carrying it out; the essential, nevertheless, remains for modern penology that society, having condemned quite justly the offenders, consents to their imprisonment, but having done that welcomes all possible methods which will lead to their re-education, to their re-socialization, and to their improvement with regard to making them in some measure at least worthy of a better life and made acceptable to a new form of social activity.

Reviewed from this angle, having seen all the practical steps which are being taken in a new type of penal reform directed towards the individual, we might understand rather more profoundly the import of the programme which has been outlined by M. le Conseiller Marc Ancel:

> The individual who has borne witness to his anti-social activity must nevertheless be restored to society; but his restoration, like the restoration which he makes to society for his offence, must be made *qua* man by means of human and humane methods and in the light of human values which he himself represents as an individual in a human community.

It is this also which His Holiness Pope Pius XII outlined to the jurists and to all who are interested in the cause of true justice, that is to say in that which redeems and restores man to his proper function as the creature of God:

> The community should see to it that it is disposed to welcome lovingly the man who comes forth from prison to freedom. This love should not be blind but clear-sighted, and, at the same time, sincere, helpful and discreet, such as to make possible his re-adaptation to social life, and a renewed consciousness of himself as free from guilt and punishment. The requirements of such a disposition are not based upon a utopian blindness to reality . . . it is still true that many can be and are helped to obtain complete inward release, and for these, especially, no Christian effort will ever be too much or too difficult.

One might, therefore, conclude by saying that these new tendencies towards penal reform and towards a new conception of penology are in accordance with the recognition of the rights of

the individual and with the proclaiming of his dignity as a human person, at the same time as they accept the conditions of man as he is with all his weaknesses and with all his aspirations and his possibilities and with the potentiality of his always being redeemed. After the long detour which took place during the juridic liberalism of the last century and all the false allegation of an amoral and utilitarian positivism we can only applaud and heartily welcome any return to ideas which are more in conformity with the Christian tradition. So far as one can see at the present time they seem to promise a future much more fruitful and beneficial since they are based on two principles which are as just as they are generous: during the execution of the sentence there is placed into operation the best possible means for the re-establishing and the re-educating and the resocializing of the individual as a person, as a human being; at the conclusion of the sentence he, the individual, is offered all possible resources of supervision and of charity in order to ensure his readaptation to society.

In making an appeal for a greater degree of understanding and comprehension with regard to those who have fallen in any way whatever and to a greater degree of solidarity amongst the community to help them to raise themselves once more to a full social life, in making appeal to a greater degree of hope that they might be saved and restored to this new kind of life, modern penology can only surely awaken a favourable response in all souls who can truly be said to be Christian.

THE CASUISTRY OF CAPITAL PUNISHMENT

By CHRISTOPHER HOLLIS

MOST of the things that are to be said on the pragmatic aspects of capital punishment have by now been said a great many times. Public opinion seems willing to settle the question on the sensible ground whether or not capital punishment is an effective deterrent. Under what system are there likely to be the fewest murders? That is reasonable enough. But there is a certain danger that people will think that, because Christianity has nothing dogmatic to say on the question, therefore it has nothing to say at all. Less has been said about the casuistry of the problem, and it is on that that, without any sort of claim to authority, I should like to make a few reflexions.

Christians have, of course, before them the command 'Thou shalt not kill', and there is the great text of non-resistance in the Sermon on the Mount. From these two texts some people have deduced an obligation of absolute non-resistance. They have demanded a policy of total pacifism in foreign affairs, and I have come across people who on capital punishment have argued that any consideration of the probable effects of abolition is irrelevant. Even if the consequence of abolition, runs the argument, should be a great increase in the number of murders, that is no concern of ours. We are in God's hands. It is for God to settle whether society is to be preserved or not. Our sole duty is for ourselves to obey His laws, whatever others may do, and one of His laws is that there shall be no killing. Therefore we are unconditionally forbidden to kill, whether in war or by civil process and execution.

But the general body of Christian opinion and the teaching of the Church have not held that view. Nor can it be sensibly derived from a reading of the Gospel. The Sermon on the Mount was not delivered *urbi et orbi* but to a special group of disciples, deliberately led apart from the main body of the people. There is no suggestion that obligations, laid upon them so that they might set a special

example, were necessarily and without qualification obligations to be accepted by every member of society. There was no command given to the centurion that he must resign his commission. Christian teaching has always accepted prudence as a Christian virtue. Whatever individuals who have received a special vocation may be called upon to do, the general body of society has both a right and a duty to behave in such a way as to make likely the survival of society, and St. Paul, speaking not to a special audience of chosen disciples but to the general body of the Romans, interprets Christ's teaching on non-resistance in the significantly qualified form, 'If it be possible, as much as is in you, have peace with all men.'

But, if Christian teaching does not allow us to settle these questions merely by invoking absolute precept and without looking at the circumstances, still less does it allow us, ordinary members of society, to go to the opposite extreme and say that there is no special Christian teaching on the subject at all. If it be true—as, alas, it is true—that Christians have been found in the past and can be found today who think that, because Christianity does not impose a duty of absolute pacifism, that therefore they can with an easy conscience kill in any war upon which they may happen to stumble, indifferent whether there is any serious reason to think that it is a necessary war or not, that is a sad confusion. War to the Christian is obviously legitimate only as an *ultima ratio*—only permitted when thus alone can society be saved.

Into the question what constitutes a necessary war we need not here enter, for it is not the subject with which we are immediately concerned, but obviously the same sort of arguments apply to capital punishment. Even if there is no absolute, unconditional command which forbids the State from killing under any circumstances whatsoever, yet most clearly Christian teaching does hold that God has kept in His own hands to a very special extent the matters of our birth and death—our 'coming hither' and our 'going hence'. The Church, speaking in God's name, strictly regulates our birth, ordains procreation as the main purpose of marriage and forbids practises which militate against it, and it would be strange indeed if the Church, which was so deeply concerned that nothing should prevent us from being born, were to be indifferent whether or not anybody killed us after we had been born. And of course it is not so. No serious Christian, I fancy, denies the doctrine of what is not very lucidly known as 'the

sanctity of human life'—which means, as I interpret it, that even for the State to take human life is a terribly serious thing—only to be justified in the extreme case where by so doing it will on balance save more lives than it loses.

There is, it is true, a certain parallelism in the arguments which justify war in extreme cases and the arguments which justify hanging in extreme cases. There is a curious difference in the psychological attitude of society towards the two. Those who justify war very reasonably honour the soldier as a member of one of the reputable and necessary professions. It would, it is true, be thought somewhat wanting in taste if one who had killed people in a war should boast about it on a social occasion. Yet no one would shrink from him merely because the duties of his profession had caused him to take life—even if with his own hands. Very different is the general attitude to a hangman. Few people, even among the most vigorous defenders of capital punishment, would feel comfortable if they had a hangman in their company. The reason why a soldier is of greater honour than an executioner it is indeed easy enough to see. Quite apart from the merits or demerits of war or capital punishment, whatever the particular facts of the particular incident, there is at least a presumption that the soldier, while taking life, has risked, or is prepared to risk, his own life. This gives some dignity to his achievement. For that reason even a duellist, rightly or wrongly, used in past times to be socially more acceptable than an executioner. The soldier is also either a conscript under compulsion or at the least some higher motive of patriotism has caused him to join up. (I think that we should most of us feel more meanly of a merely mercenary soldier who was killing in some cause in which he was not in the least concerned.) But the State requires so few hangmen that there is no compulsion, not even a moral compulsion, on any individual to do the job. He who applies for it applies for it because he likes it, and we are surely right in thinking such a man horrible and right to be shocked if, as is alleged, there are many more applicants for the post than there are vacancies. It shows that we have struck a pretty horrid vein in human nature.

It is indeed, it must be confessed, both a little strange and more than a little shameful that there should not have been more in the way of religious protest, whether Catholic or Protestant, against the barbaric penal codes of past ages, when people, and even children, were hanged for petty thefts and other such actions

which in no way endangered life or the existence of society. But that is irrelevant to the current controversy. For there is not today, I think, any serious defender of capital punishment who does not base his case on this very principle of the sanctity of human life—who does not argue that the capital penalty should be exacted only for murder because murder is of its nature different from all other crimes and who argues that it should be exacted for murder, so that society may express its special abomination of that crime and because it is an effective deterrent, and therefore, if it is exacted, there will on the whole, even counting in those who are hanged, be fewer people killed than if there were no capital punishment. The argument is a perfectly coherent and honourable one. The only question is whether there is any reason to think that it is true.

But before considering whether capital punishment is an effective deterrent—a matter upon which Christians may legitimately differ—a matter upon which, it may be, that the answer depends upon circumstances and that it is effective in one sort of society and ineffective in another, it is well to note certain points upon which surely all Christians must agree, whether they favour or oppose capital punishment. It is not necessarily wrong for a Christian to kill another man in war, even though there is, of course, no question of any presumption even that that other man is personally wicked or that the killing of him has about it anything of the nature of punishment. We may kill a man because only by a certain action, of which the killing of him is a necessary part, is it possible to preserve society. But obviously the Christian in war is not permitted to take any life which it is not absolutely necessary to take. He is not permitted to take part in any slaughter if the necessary ends can be attained without that slaughter, or to break the laws of war. He is not permitted to use new and more horrible weapons unless the use of them is necessary. Whether there be weapons that are so horrible that the use of them is intrinsically evil, that it is better to surrender and to lose the war rather than use them is of course a matter that is much debated nowadays, but that again is a debate into which we need not here be drawn, for it is irrelevant to our present argument. But at least few would, I fancy, not accept the lesser proposition.

So with capital punishment. I would not say that Christian teaching forbids the State from taking life under any circumstances. But I would say that on Christian principles the punish-

ment of death is of its nature different in kind from any other punishment. In taking life the State, even if it be justified, is invading what is to a peculiar extent a prerogative which in Christian teaching God has kept in His own hands. Therefore the State is not justified in taking life unless it is absolutely necessary. If at the conclusion of enquiry it were to appear that there was nothing to choose in effectiveness between the death penalty and some other penalty—that it was six to one and half a dozen to the other—then surely the Christian would be bound to give his vote for the other form of punishment. We are sometimes told 'The death penalty may not be a universally effective deterrent. But at least is does deter some people. As long as there is anyone who is kept from murder by fear of death it should be retained. The abolitionists will have a grave responsibility if one murder which would otherwise have been prevented is caused by abolition.' But this is a curiously one-sided argument. The only element of truth that it contains is that the decision is a grave decision, to be taken with responsibility. A decision must be taken. To retain hanging is just as much a decision as to abolish it. No one could possibly deny that in the infinite variety of human nature there has never been a single case where the fear of hanging was an effective deterrent. Indeed there are known cases, such as the de Antiquis case, where in all appearance it was an effective deterrent. But in framing a penal code, all that we can do is to weigh the balance of advantage and disadvantage of the retention of any form of punishment. The question is not Does the fear of hanging deter anyone from murder? but Does it encourage to murder more people than it deters from murder? It would be hard for anyone who has studied the Royal Commission's Report not to agree that, surprising as the conclusion may be to one who has not studied the psychopaths among whom the overwhelming majority of murderers are found, on balance experience shows that there is grave reason to believe that it does—not to agree with Jung that on balance hanging is a cause of murder rather than a deterrent from it.

But, however it may be with these debatable matters, there are some arguments which are commonly used in the debate which any Christian, whether abolitionist or not, must agree to be unacceptable. We are, for instance, sometimes asked why we should put ourselves to the trouble and expense of keeping these murderers alive. I do not think that any Christian could use that argument in support of killing. Or again we are asked what is to

be gained by keeping these 'worthless' people alive. That, too, is to a Christian a blasphemy. Christ died for all men—for the murderers as much as for the rest of us. We have no right to call any man 'worthless'. If we are to start asking the general question whether it is an advantage to society that such and such a man should be kept alive, where shall we end? 'Who shall 'scape whipping?'

The Christian who argues in favour of capital punishment tends to base his case on an argument that is in itself logical but is derived from a misunderstanding of what the abolitionists are saying. Is death, we are asked, so great a thing? Are we not all to die some time soon—whether at the hands of the hangman or in some other way? Is it not a pagan, secularist view which attaches such an enormous importance to the mere prolongation of human life? But such questions almost always go hand in hand with the accusation that abolitionists are sentimentally concerned about the murderer and forget the murderer's victim. But in my own experience, though I have a hundred times heard anti-abolitionists say that this is the abolitionist's argument, I have yet to come across any abolitionist who in fact uses that argument. Whether in fact a murderer would prefer to be hanged or to be imprisoned for life is a very open question. Some doubtless would prefer the one and some the other. Whatever his fate the future of a convicted murderer is not likely to be very enviable or untroubled. But at any rate the question is a very secondary question. Our primary concern with murderers is not to be kind to them but so to order things that they are as few as possible, and the object of policy must be neither to hurt them as such nor to cosset them as such but to create conditions under which they are least likely to commit murder. Christian teaching is always much more concerned about the bad effects of social arrangements on the rich and the powerful and the masters of policy than on the poor and the weak and the victims of it. And it is the ill effects of capital punishment on society at large with which we are much more concerned as Christians than in its ill effect on the particular murderer who is hanged. I do not see how anyone can seriously doubt that there is such an ill effect—that hanging does arouse a hateful, sadistic interest throughout all society and that this glamour of the gallows, while most of us are merely mildly degraded by it, does drive over into murder a few half-crazed souls, who might not have been attracted by it had it carried with it a more humdrum

penalty. Obviously society has a duty to the murderer as to anyone else to reform him and to turn him into a fit member of society if it can possibly do so. It is only justified in abandoning this task if it can be shown that it is absolutely impossible of accomplishment. And who can say that such things are impossible? Is not despair an unforgiveable sin? Does not society rightly refuse to kill lunatics, even though they be dangerous and what in common speech is called incurable? It is surely no accident that the most successful results in the psychiatric treatment of murderers have been obtained in abolitionist countries like Sweden and Switzerland. For where there is no capital punishment, the murderer presents a challenge to society which is not present when society can so easily have done with him by hanging him up.

The question is sometimes raised whether punishment should be retributive or deterrent. Interesting and important as that debate is in itself, it has not, I fancy, very much bearing on the present controversy. In fact the distinction is to some extent a distinction of the lecture-rooms. All sensible punishments are both retributive and deterrent. That there must be an element of retribution is obvious from the fact that we all agree that it is wrong to punish unless there has been an offence. The strongest of supporters of capital punishment would object to the killing of hostages although it might well be that in political crimes, at any rate, to kill a hostage might be a more effective deterrent than to kill the killer. No Christian would advocate the execution of a homicidal lunatic, provided it was certain that he was mad, however dangerous and inconvenient it was to keep him alive. On the other hand, while society is entitled—indeed under obligation—to punish murderers, there is clearly, in spite of de Maistre, no divine command that we should necessarily punish them by death. On the contrary we are specifically forbidden to act on the precept of an eye for an eye and a tooth for a tooth. While continuing the punishment of murderers, we should be foolish to continue with a particular form of punishment that has proved itself ineffective as a deterrent. The whole question comes back to the questions with which we started:

What is an effective deterrent? Is hanging an effective deterrent?

To sum up, then, there is no dogmatic Christian teaching one way or the other on the rightness or wrongness of capital punishment. The accusation against it is rather that it is a silly punish-

ment. I do not deny that it is my opinion that that accusation can be proved though I do not pretend it to be proved in this article. I admit, of course, that there are many sincere Christians who do not think that it is proved, and they are perfectly justified in upholding capital punishment. But at the same time it is surely true that the issue is concerned with a matter of such seriousness that, if one thinks the punishment to be a silly one, one ought to think it a moral obligation to do what is in one's power to get it abolished.

OBSCENITY, LITERATURE AND THE LAW

By NORMAN ST. JOHN-STEVAS

THE law governing obscene publications in England has recently been subjected to severe criticism owing to the prosecutions launched against a number of reputable authors and publishers for 'publishing obscene libels'. This wave of prosecutions has now subsided, but the law has remained unchanged and there is nothing to prevent the recurrence of another series of indictments. It is still, therefore, of some value to examine the provisions of the existing law and the principles on which it is based.

Some maintain that there should be no law for the suppression of obscenity, because far from being an evil, it is a necessity in modern conventional society. Havelock Ellis held this view, arguing that the conditions of contemporary society require relief from oppressive conventions just as the conditions of childhood create the need for fairy stories. Obscene books, therefore, are not aphrodisiac, but act as safety valves protecting society from crime and outrage. A more convincing argument is that obscenity forms a necessary and valuable part of human life. The sexual appetite must be satisfied and find expression both in art and in life.

> Half the great poems, pictures, music, stories of the whole world [wrote D. H. Lawrence] are great by virtue of the beauty of their sex appeal. Titian or Renoir, the *Song of Solomon* or Jane Eyre, Mozart or Annie Laurie, the loveliness is all interwoven with sex appeal, sex stimulus, call it what you will. Even Michael Angelo, who rather hated sex, can't help filling the Cornucopia with phallic acorns. Sex is a very powerful, beneficial and necessary stimulus in human life, and we are all grateful when we feel its warm, natural flow through us like a form of sunshine.

Thus to outlaw obscenity is to falsify life, to separate the sexual appetite from everyday living and ultimately to degrade it. Lawrence spent the greater part of his life struggling against this

attitude and its consequences, and was branded as an obscene writer, whereas his attitude to sex was essentially an integrated and ultimately a moral one. He was attacking the whole industrial and urban society of modern England which alone makes possible the separation of life and sex, converting life's greatest mystery into 'a dirty little secret'.

Obscenity raises the whole problem of censorship and freedom of discussion in contemporary society. The one point on which those involved in the obscenity debate are agreed is that a censorship of books before publication is undesirable. 'The liberty of the press,' wrote Blackstone, 'is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications and not in freedom for criminal matter when published.'

The experience of the Irish Censorship Board confirms the opinion of those who are opposed to a previous censorship. Up to the present time over four thousand books and nearly four hundred periodicals have been banned. In the list of banned books, titles like *Hot Dames on Cold Slabs* and *Gun Moll for Hire* are found side by side with Proust's *Remembrance of Things Past* and André Gide's *If It Die*. Four winners of the Nobel Prize for Literature, and nearly every Irish writer of distinction, including St. John Gogarty, Liam O'Flaherty, Kate O'Brien and Sean O'Faolain appear in the list. Irishmen may not read Charles Morgan's *The Fountain*, Somerset Maugham's *The Painted Veil*, Aldous Huxley's *Point Counter Point*, or George Orwell's *1984*. Until released by the Appeal Board, Graham Greene's novels *The Heart of the Matter* and *The End of the Affair* were also forbidden to Irish readers. The British Government's *Report of the Royal Commission on Population* (*1949*) was placed on the list because it advocated birth control, and the same fate overtook Halliday Sutherland's *Laws of Life*, despite the fact that it carried the imprint of the Censor of the Archdiocese of Westminster. Senator Kingsmill Moore was fully justified when he described the Board's list as 'Everyman's guide to the modern classics', during a Senate Debate of 1945, adding that the Board had 'affronted the general opinion of decent and responsible men: the effect of it has been to impose the view of five persons as a kind of fetter upon the intellect and information of the nation'. Undoubtedly, the Board has succeeded in keeping out of Ireland a great mass of pornography of a filthy and corrupting kind, but this has only been achieved at the price of depriving Irish readers of many of the best works of contemporary literature.

Censorship is rejected in England on grounds of principle, and the wisdom of this principle is confirmed by contrary practice elsewhere. Whatever may be the theoretical arguments in favour of censorship—and Plato has shown that they can be weighty—the practical advantages that follow from a wide freedom of publication are far greater than those benefits which might be gained by a system of censorship. Freedom of discussion is perhaps the basic doctrine of the liberal society, and springs not from any cynical contempt for truth, but from the conviction that no one man or body possesses truth in its entirety. To attain to truth the human mind must be free: free to speculate, to express, to make mistakes and to try again. Further, the liberal ethic presupposes an adult society with a certain minimum of education and the ability if left to itself to choose the right thing freely. Such freedom has, however, always been limited, although the limits have varied from decade to decade. Orators speak of the difference between 'liberty' and 'licence', but how does one distinguish? No logical point exists at which liberty can be distinguished from licence, just as there is no numerical point at which the number of constraints imposed by the State changes a free into a slave society. The liberal doctrine is one of the 'minimum' State in which constraints are kept to the minimum necessary for good government and not imposed for their own sake. Thus a man may publish what he pleases subject to the constraints of the law of civil and criminal libel. He must not defame, he must not blaspheme, he must not be seditious and he must not be obscene, but within these limits he is free to publish what he pleases. Blasphemous and seditious libel are now dead letters, and the worst features of the libel law have been modified by the Defamation Act of 1952. Today obscene libel is the only effective legal limitation on freedom of discussion, although there are obviously many non-legal limitations from prevailing standards of taste to the existence of monopoly institutions such as the B.B.C.

Underlying the dispute about obscenity is a real clash of social interests. Authors have a right to communicate their thought and work freely. They must feel free if they are to give of their best, and they cannot feel this if they are in continual fear of prosecution.

> The police magistrate's opinion is so incalculable [wrote Virginia Woolf], he lets pass so much that seems noxious and pounces upon so much that seems innocent—that even the writer

> whose record is hitherto unblemished is uncertain what may or may not be judged obscene and hesitates in fear and suspicion. What he is about to write may seem to him perfectly innocent—it may be essential to his book; yet he has to ask himself what will the police magistrate say: and not only what will the police magistrate say, but what will the printer say and what will the publisher say? For both printer and publisher will be trying uneasily and anxiously to anticipate the verdict of the police magistrate and will naturally bring pressure to bear upon the writer to put them beyond the reach of the law. He will be asked to weaken, to soften, to omit. Such hesitation and suspense are fatal to freedom of mind and freedom of mind is essential to good literature.

Recent events have proved Virginia Woolf to be right. After the 1954 prosecutions printers all over the country employed extra readers to hunt through manuscripts, especially novels, and to mark passages which some old lady or police magistrate might consider obscene. Until such passages had been deleted they refused to print the books. One of America's most distinguished contemporary novelists was unable to find an English printer for her book—widely praised on its publication in the United States —because it contained certain passages which, taken out of their context, might fall within the present legal definition of obscenity. Another American novel has been abandoned by a well-known publisher because of the impossibility of obtaining a printer. In its American edition this novel of 450,000 words ran to over 900 closely packed octavo pages, and its price in the English market would have been not less than thirty-five shillings. The publisher's readers were convinced that the book showed great talent and had no doubt of its moral purpose since it criticized severely the life which it depicted. Nevertheless because for 2 per cent of its total length the book described sexual incidents in coarse language no printer could be found. The result of the police prosecutions has thus been to establish an unofficial censorship which is continuing.

Freedom to discuss every sphere of life is especially important today, since literature, and in particular the novel, is closely concerned with psychological problems and the realistic portrayal of sex. It can hardly be suggested that the Victorian solution of omitting sex from literature or confining the representation to those of an impeccably regular kind, which a reverend mother could contemplate with equanimity, should be re-adopted today. Such an attitude would maim contemporary literature by arti-

ficially restricting its range and shutting off from its vision what François Mauriac has called 'that place of desolation, the human heart'. Not all authors, of course, find conventions cramping. Dickens was happy to accept those of his own time, and a skilful writer like Thackeray was able to exploit them. It is true also, as C. S. Lewis has written, that to banish prudery from literature is to 'remove one area of vivid sensibility' and 'to expunge a human feeling'. The obscenity problem is, however, not a cure for these writers but for those such as Lawrence who are not following but leading their readers in directions to which they have not grown accustomed. For such writers literary reticence and obscenity laws can be destructive.

If authors have a special position in society they also have duties, since they are not writing in a vacuum but writing to be read. Literature may or may not have a social purpose, but it certainly has social implications and writers cannot be totally emancipated from the customs of the community in which they live. If a great literature cannot be created without freedom, neither can it be sustained without a sense of responsibility on the authors' part. The greater the power and the less the external restraint, the more urgent the need of interior sanctions voluntarily imposed. Ultimately, the working of a free society is dependent on this intangible, a sense of self-discipline, the only alternative to which is regimentation. A free and, therefore, a great literature has grown up in England because of the high sense of responsibility felt by authors for their work. Freedom and responsibility go together, one extending the other, so that freedom is possible only in a confident and mature society. It is no accident that the three great English contributions to civilization have been law, literature and parliamentary government, all dependent upon self-restraint and an unwritten law of liberty.

Those authors who pretend that there is no problem, and that the whole obscenity question has been created by a group of unenlightened Grundys and Comstocks only bring discredit on their own cause. Nor is the inevitable carefully selected quotation from Milton—out of its historical and literary context—of any practical utility in the social conditions of the present time.

> The whole problem of propaganda [said Sir Ifor Evans at the P.E.N. Congress of 1944], the dissemination of opinion, the distribution of printed matter, has changed entirely since Milton's day. Milton's conception of the circulation of ideas was that which

> might have prevailed in Greece—a small audience all of whom are capable of forming their own judgements, with discussion to correct false emphasis. He has in mind the formulation of an adequate judgement by the Socratic method. Even the England of his own day did not fit into that picture altogether, and the world of our day does not fit into it at all. One man or group of men can by subtle psychological methods, and by use of the newspaper and radio, effect a secret tyranny over the minds of millions.

To use the language of Milton to defend the immunity of commercial interests whose only object is to make money by the sale of degrading pornography is only to mislead.

On the other hand those who pose the question as a clash between a group of irresponsible intellectuals, leaders of a minority literary coterie, striving to impose their extravagances on the virtuous and sober-living majority, are equally wide of the mark. Authors certainly have an interest in a free literature, but it is one shared by the rest of society. Consciously or unconsciously a nation's literature mirrors its life and values, being at once the repository of its culture and the guarantee of its continuance. If authors have an interest in writing freely, the public in general has an equal interest in being able to choose what to read. Society, however, also has an interest in preventing the exploitation of literature by those who wish to make money through the stimulation of the baser appetites and passions. Racketeers are especially tempted today by the emergence in every modern state of a new public who can read, but who are only semi-literate. On the whole, perverts excepted, educated people do not read pornography, since their taste for reading is fully formed, and they find it dull and uninteresting, but the barely literate masses have had no such opportunity and here the purveyors of filthy sub-literature find a profitable market.

Presumably it is this consideration which determines the policy of prosecuting only those books which are sold at popular prices. Publishers certainly act on the presumption that a high-priced book will not be prosecuted, and sometimes produce editions of the same book, one bowdlerized at a low price, and the other unexpurgated at a high one. Thus *The Mint*, by T. E. Lawrence, recently published, came out in two editions: the 'popular' edition at seventeen shillings and sixpence 'from which certain Anglo-Saxon words have been omitted', and a full edition at three pounds thirteen shillings and sixpence, which included the offend-

ing words. The latter edition was heavily oversubscribed. Some see in this practice a certain class discrimination, distinguishing an *élite* who can be trusted from the majority who cannot. It would be absurd, however, to suggest that the rich are either incorruptible or even beyond further corruption, and the Director of Public Prosecutions is probably actuated by the belief that the social gain in suppressing a high-priced book with a limited circulation is not worth the trouble of launching a prosecution. When this practice is extended to deprive the general public of literary works it is indefensible, but the protection of the mass of the people from the corrupting effects of pornography is not so much class prejudice as a realistic recognition that the present educational level leaves them open to victimization.

It has been assumed that pornography does have a corrupting effect on its readers, but this assumption must be further examined. Such an assertion rests not on scientific evidence but on what is called 'common sense'. A further assumption is made that even if there are legitimate doubts about the effect of reading upon adults there can be no doubt that reading does have a positive effect on youth and especially children.

Undoubtedly, the general moral standards and social customs prevailing in a community are frequently formed or changed by the influence of books. 'I am convinced,' wrote Bernard Shaw in his preface to *Mrs. Warren's Profession*, 'that fine art is the subtlest, the most seductive, the most effective instrument of moral propaganda in the world, excepting only the example of personal conduct.' In our own time we have the example of André Gide, whose books changed the outlook of a generation. The law, however, cannot be invoked to protect prevailing moral standards, first because this assumes a finality which such standards do not always possess, since much of what passes for morality is merely convention, and secondly because in a country such as England there is no common agreement on ultimate moral attitudes. A book advocating divorce will appear 'obscene' or 'corrupting' to one group, while another will regard it as an argument for a necessary freedom. Similar considerations apply to books about subjects such as birth-control or homosexuality on which there is no agreed opinion. Unless there is universal agreement on any subject, such as, for example, compulsory education, the liberal state cannot impose coercive sanctions. The situation is different in a state such as Southern Ireland, where there is an almost

universal agreement on certain moral principles, and which enables a censorship to be imposed which would be intolerable in England.

Even where there is general agreement on a moral issue the dangers of using the law as a means of moral enforcement are very great. The concepts of law and morality become confused and morality is thought to draw its validity from legal sanctions. Furthermore the attempt to enforce morals by law frequently leads to greater evils than those the law seeks to prevent. On this point the words of Pius XII in his 'Discourse to the National Convention of Italian Catholic Jurists' in 1953 are of interest:

> It is plainly true that error and sin abound in the world today. God reprobates them but He allows them to exist. Wherefore the statement that religious and moral errors must always be impeded, when it is possible, because toleration of them is in itself immoral, is not valid absolutely and unconditionally. Moreover, God has not given even to human authority such an absolute and universal command in matters of faith and morality. . . . The duty of repressing moral and religious error cannot, therefore, be an ultimate norm of action. It must be subordinate to higher and more general guiding principles, which in some circumstances allow, and even perhaps seem to indicate as the better policy, toleration of error in order to promote a greater good.

The greater good—in this case the freedom of literature—makes it necessary to tolerate some obscenity, just as the greater good of the freedom of the Press makes it necessary to tolerate worthless and even harmful papers.

The justification for the laws against pornographic books is the belief that such books have a directly undesirable effect on sexual behaviour. Unhappily, there is little scientific evidence to support this view, since very little research has been carried out on the causal relation between reading and behaviour. Social sciences can never hope to be as exact as the natural sciences since their study is man not matter, and with regard to sexual behaviour man is subject to so many differing stimuli that it is difficult to isolate one and to gauge its effect. Furthermore, it is at least as probable that it is sexual desire, especially if frustrated, that creates the taste for pornography and not pornography which stimulates sexual desire.

One of the very few investigations into this field was carried out by Dr. Kinsey, and he gives the result of his researches in the

second of his two reports (*Sexual Behaviour in the Human Female*). He concludes that for the pre-adolescent and the late teenager erotic literature is not an important factor in arousing sexual desire. The age group most likely to be aroused by vicarious experience is that of the adult male. Women are less likely to be aroused by erotic literature than men. He further stressed that sex information comes as much from experience and word of mouth as from reading matter. Unfortunately he grouped together information from the verbal and printed word, and it is not possible to establish from his tables the proportion between these two sources of information. However, in 1938, the New York City Bureau of Social Hygiene carried out some researches, and showed that books play a very small part in the dissemination of sex information among women. One thousand two hundred women out of 10,000 college and school graduates were questioned about the sources of their sex knowledge. Of the 1200 only 72 mentioned books and none of these were of the pornographic type—one was Motley's *Rise of the Dutch Republic*. Asked what they found most sexually stimulating, 95 of the 409 who replied answered 'Books'; 208 said 'Men'!

Behaviour is a function of both personality and environment, the dominant influence being personality. However, as the Jesuits have long known and modern psychologists stress, the personality is formed at a very early age, normally before the reading habit is formed. Environment, of course, influences behaviour, but direct experiences have a much greater influence on human behaviour than vicarious experiences through books. Once again there is no direct evidence in point, but the research into drug addiction and voting which has been carried out in the United States shows that reading matter and even mass mediums of communication have much less influence on attitudes than is generally supposed. Mass communications confirm and reinforce existing attitudes, but they rarely cause a fundamental change of outlook.

Youth and children are probably more open to influence because their attitudes have not yet been fully formed, and they have little residue of past experience on which to draw. There is no evidence that the reading of horror comics, for instance, leads directly to the committing of delinquent acts, but they may well have the more general effect of deadening a child's sensitivity and accustoming him to accept brutality and violence as a normal part of human conduct. In 1946, George Orwell noted the change

which had come about in boys' papers after the war, and pointed out that bully worship and the cult of violence entered into the comics in a way they never did in the old *Gem* and *Magnet* and even the *Hotspur* and the *Wizard*. Dr. Wertham, in his book, *Seduction of the Innocent*, stressed the brutalizing effect that horror comics have on children, and supported this view by experiments carried out by himself and other psychologists.

> The most subtle and pervading effect of crime comics on children [wrote Dr. Wertham], can be summarized in a single phrase: moral disarmament. To put it more concretely it consists chiefly in a blunting of the finer feelings of conscience, of mercy and sympathy for other people's sufferings and of a respect for women as women and not merely as sex objects to be bandied around, or as luxury prizes to be fought over. Crime comics are such highly-flavoured fare that they affect children's taste for the finer influences of education, for art, for literature, and for the decent and constructive relationships between human beings and especially between the sexes.

He refuted the argument that such reading provides a necessary 'catharsis' for children's emotions because emotion is stimulated without being given any adequate outlet. The child identifies itself with the characters in the comic and is left with only a limited scope for release in actions. These actions, he wrote, can only be 'masturbatory or delinquent'.

His argument that the reading of horror comics leads to juvenile delinquency is less convincing. He gives numerous examples of juvenile delinquents who had many comic books in their possession, but so have many children who never commit a delinquent act. The argument is the old one of 'post hoc propter hoc' and is open to the same objections. Sheldon and Eleanor Gluck in their study, *Unravelling Juvenile Delinquency*, gave little prominence to reading among the ninety factors they listed as causes of juvenile delinquency. They showed, in fact, that delinquent children read much less than the law-abiding.

Horror comics have now been banned in England and in many Commonwealth and European countries. Such a step can be justified as a precautionary measure, if only to protect abnormal children, since there is no literary or social interest in the horror comic to be weighed against its possible harmful effect. Further, children are clearly in need of protection, whereas adults can be expected to choose for themselves. The irony of the horror comic

situation is that they are read—at any rate in the United States—as much by adults as by children. Forty-one per cent of male adults and twenty-eight per cent of females in the United States read horror comics regularly.

The causal relation between reading and behaviour is so uncertain, the number of sexual stimuli so diverse, and the subjective factors are so numerous, that the law in the sphere of obscenity should proceed with caution. One point seems evident, that literary standards should not be regulated by law. Literature is creative, imaginative and aesthetic, with no extrinsic purpose, its one criterion being fidelity to its own nature. It is the study of the universal, but in the light of the individual and the particular, an expression of man's creative faculty, intent on beauty not on utility. Law is not creative but regulative, seeking not a special ideal harmony but a generalized justice and the application of universally valid principles. Thus it is impossible to attempt to confine literature within the Procrustean bed of the law.

On the other hand the law is rightly used to suppress the social evil of pornography and to punish those who seek to benefit by its distribution. The point has been clearly put by Virginia Woolf:

> There can be no doubt that books fall in respect of indecency into two classes. There are books written, published and sold with the object of causing pleasure or corruption by means of their indecency. There is no difficulty in finding where they are to be bought nor in buying them when found. There are others whose indecency is not the object of the book but incidental to some other purpose—scientific, social, aesthetic, on the writer's part. The police magistrate's power should be definitely limited to the suppression of books which are sold as pornography to people who seek out and enjoy pornography. The others should be left alone. Any man or woman of average intelligence and culture knows the difference between the two kinds of book and has no difficulty in distinguishing one from the other.

George Moore made the same distinction in *Avowals*. He denied that pornography and literature overlap.

> On the contrary the frontiers are extremely well defined, so much so, that even if all literature was searched through and through it would be difficult to find a book that a man of letters could not instantly place in one category or the other. The reason is that real literature is concerned with description of life and thoughts about life rather than with acts. The very opposite is true in the case of pornographic books.

George Moore and Virginia Woolf rather over-simplify the problem, but they do suggest a rational principle on which the law should be based. The Herbert Committee of 1955 took this principle as the basis of their deliberations and came to the conclusion that since the existing law was far from achieving its implementation in practice, the law should be reformed. Under the present law there are two distinct means of proceeding against obscene publications. At common law it is an offence to publish an obscene libel, and for this offence any author, publisher, printer, or distributor, may be prosecuted and sent to prison for an unspecified period of time. The test of obscenity was laid down in 1868 by Chief Justice Cockburn in Hicklin's case. 'The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.' The meaning of this formula is by no means clear, although it has always been followed by the courts. One point seems established that the courts will consider not the 'intention' of the publisher but the 'tendency' of the matter published to 'corrupt and deprave'. What do these last words mean? Clearly a book which shocks or disgusts by the offensiveness of its language does not come within the scope of the test. 'Deprave' and 'corrupt' are both strong words, and cannot be equated in meaning with writing that is merely offensive or shocking. The words can have any or all of three meanings. First, they can mean that the tendency of the book is to arouse impure thoughts in the mind of the reader or viewer. Secondly, they can mean that such a person would be encouraged to commit impure actions. Thirdly, they can mean that the reading of the book or looking at the picture would endanger the prevailing standards of public morals. The courts have used the words in all three senses.

A further question which must be answered is to whom the words 'corrupt' and 'deprave' apply? The answer may be normal adults, abnormal adults, normal children, or abnormal children. The English law has always stressed the importance of protecting the young. Thus the old form of indictment invariably contained an averment about the 'morals of youth', and in the Hicklin case Chief Justice Cockburn specifically mentioned the need to protect youth. Such a consideration seems to have been uppermost in the minds of most judges and counsel who have taken part in obscenity trials, but in the *Philanderer* case Mr. Justice Stable rejected the

youth criterion. 'A mass of literature,' he said, 'great literature, from many angles is wholly unsuitable for reading by adolescents, but that does not mean that the publisher is guilty of a criminal offence for making those works available to the general public.'

The Herbert Committee drafted a Bill which abolishes the old common law offence of obscene libel and this Bill was given a unanimous first reading by the House of Commons in March 1955, although it has not yet obtained a second reading. In place of the misdemeanour the Bill substitutes a new offence of 'distributing, circulating, selling, or offering for sale any obscene matter'. No person can be convicted of this offence unless it is affirmatively proved that he did so with an intent to corrupt, or was 'reckless' as to the matter having this effect. 'Reckless' is here used in the legal sense, meaning foresight of consequences, although there is no desire that the consequences shall take place. The prosecution must prove that the accused person actually foresaw the consequences of his action, not merely that he ought to have done so. In framing this provision the Committee had in mind the fundamental maxim of the criminal law: *actus non facit reum nisi mens sit rea*—the intent and the act must both concur to constitute the crime. They also considered that 'intention' was the only effective way of distinguishing pornography from serious works with an incidental obscene content.

A second major reform proposed by the Bill is a new test of obscenity. No attempt is made to define the exact meaning of the word, but the jury must consider certain factors in deciding whether or not a book is obscene. Strictly interpreted the Hicklin case means that a book can be held obscene if it contains only one obscene passage. This interpretation was decisively rejected by the American judge, Judge Hand, when he lifted the ban on *Ulysses* in 1934:

> We believe that the proper test of whether a given book is obscene is its dominant effect. In applying this test, relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past if it is ancient are persuasive pieces of evidence, for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content.

In each of the recent prosecutions the jury was requested to read the whole book, and the Bill puts the matter beyond all

doubt by requiring the jury to consider the 'general character and dominant effect' of the publication concerned.

Juries must also take into consideration the 'literary or artistic merit' of the work and its 'medical, legal, political, religious or scientific character'. The Committee's view that such matters are relevant is supported by the authority of Mr. Justice Stephen. In his *Digest of the Criminal Law* he wrote:

> A person is justified in exhibiting disgusting objects or publishing obscene books, papers, writings, prints, pictures, drawings or other representations, if their exhibition or publication is for the public good, as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art or other objects of general interest: but the justification ceases if the publication is made in such a manner, to such an extent or under such circumstances as to exceed what the public good requires in regard to the particular matter published.

This point was judicially approved by the Recorder of London in the De Montalk case (1932) and is incorporated in the New Zealand legislation covering obscene publications which came into force in 1954.

To assist the jury in assessing a book's literary or artistic merit, the Bill makes expert evidence on these matters admissible. At present 'experts' are admitted to give evidence of scientific or medical value, but evidence of literary merit has always been excluded. Mr. Desmond MacCarthy was prevented from testifying in the *Well of Loneliness* case, and a similar exclusion operated in both the *Philanderer* and the *Image and the Search* cases. In the Federal courts of the United States, however, such evidence is freely admitted. The Committee felt that the distinction between scientific and literary evidence was both arbitrary and illogical and it is abolished by the Bill.

Juries must also consider the class of persons to whom the book was sold or distributed and any evidence of its in fact having had a corrupting effect. 'Tendency to corrupt', the old Hicklin test, is thus abolished. Finally the meaning of the word 'obscene' is extended to cover matter 'which whether or not related to any sexual context, unduly exploits horror, cruelty or violence, whether pictorially or otherwise'. This clause has been criticized, but the Committee felt it could not ignore a problem which has caused such widespread anxiety, and which in the 'horror comic' constitutes a new form of pornography.

Apart from the common law offence of obscene libel there are also statutory powers for destroying obscene books under Lord Campbell's Act of 1857. This Act created no new punishable offence and no penalties are laid down save the destruction of the obscene matter. Under the Act any person can lay an information on oath before a stipendiary magistrate or any two justices, that he believes that obscene matter is being kept in premises within the jurisdiction for the purpose of sale or distribution, and that an actual sale has occurred. The magistrates, if they are satisfied that 'publication of the matter would amount to a misdemeanour proper to be prosecuted as such', may issue a warrant giving authority for the premises to be entered by a police officer and the obscene matter to be seized. The magistrate, when the seized articles have been brought before them, must issue a summons calling upon the occupier to appear within seven days to show cause why the matter seized should not be destroyed. They may order matter so seized to be destroyed immediately after the expiration of the seven days allowed for appeal.

When Lord Campbell introduced this Act into the House of Lords in 1857 anxiety was expressed lest the Act should be used to attack literary works. He emphatically denied that this was his intention: 'The measure is intended to apply exclusively to works written for the single purpose of corrupting the morals of youth and of a nature calculated to shock the common feelings of decency in a well regulated mind.' Lord Lyndhurst's comment in view of the subsequent use made of the Act to suppress novels such as D. H. Lawrence's *The Rainbow* and Radclyffe Hall's *Well of Loneliness* was prescient: 'Why, it is not what the Chief Justice means, but what is the construction of an Act of Parliament.' The Bill re-enacts the main provisions of Lord Campbell's Act. Two reasons lay behind the Committee's decision to retain these powers. First they felt that the police needed such a weapon to check pornography, and secondly, they thought it undesirable to leave the police no alternative but to proceed with a criminal prosecution in every case. The Act is, however, amended in important respects. A duty is placed upon the prosecution to indicate why they consider any publication obscene, and the magistrate must make his finding of obscenity in court. Procedure under these sections is speeded up, and the injustice whereby a book can be condemned as obscene without author or publisher being able to speak in its defence is ended. In all proceedings under the Bill

authors, publishers, and printers are given the right to give and call evidence. In *The Well of Loneliness* case Miss Radclyffe Hall was prevented from giving evidence about her book, and on protesting was threatened by the magistrate with ejection. The provisions of the 1857 Act are extended to cover seizure by the Customs Authorities, who must obtain a destruction order from a magistrate or return the seized publications 'forthwith'.

Uniformity in administering the law is ensured by making all proceedings subject to the consent of the Attorney-General. At the present time the police are bound to consult the Director of Public Prosecutions before they bring criminal proceedings, but they are not obliged to listen to his advice. Furthermore there is no obligation even to consult him when the 1857 Act procedure is used. Private persons are free to bring prosecutions and in the past this power has been abused. In the Bradlaugh case of 1877, when Charles Bradlaugh and Annie Besant were prosecuted for publishing a manual on birth-control, Chief Justice Cockburn pointed out the danger of leaving this power in the hands of the public. On one point, he said, they were all agreed: 'A more ill advised and injudicious prosecution was never instituted.' The Bill ensures that such abuses shall not occur in the future. A further change in the law is the fixing of maximum penalties for all offences under the Bill.

The Bill gives legal effect to the Committee's view that the essential requirement is to distinguish pornography from serious works that may by contemporary standards be considered shocking or obscene. Pornography should be suppressed by the law, but literature is best regulated by prevailing standards of taste. These standards are constantly changing and the law only brings itself into disrepute by attempting to enforce them by means of legal sanctions. At different times Mrs. Gaskell, Charlotte Brontë, George Eliot, Thomas Hardy, George Moore and James Joyce, amongst novelists, and poets such as Byron, Shelley, Swinburne and even Tennyson, have been denounced by contemporaries as obscene, an accusation which later generations have failed to sustain. The Victorians, although foolish in many ways in their attitude to sex in literature, were wiser than ourselves, for, with the single exception of Zola, prosecutions were never instituted to suppress books of literary merit. Lord Campbell was emphatic during the debate on his Act in the House of Lords that such books should remain free of the law. By this Bill the Committee hope to restore the law to its traditional position and at the same time to bring it into accord with the changed conditions and needs of modern times.

HOMOSEXUALITY, PROSTITUTION AND THE LAW

THE report on the existing laws relating to homosexual offences and prostitution was recently drawn up by a Catholic Committee commissioned for the purpose by the Cardinal Archbishop of Westminster at the request of the Departmental Committee of the Home Office now sitting to consider and make recommendations upon this subject under the Chairmanship of the Vice-Chancellor of Reading University, Mr. J. Wolfenden. The Catholic Committee was charged with the task of presenting to the Departmental Committee a reasoned account of Catholic moral teaching upon the subject together with appropriate conclusions which might be drawn from such principles in so far as they affect the criminal law, and for this purpose the members of the Committee were chosen so as to include as wide a range of professional opinion as possible, consisting of a Professor of Moral Theology, a parish priest, a queen's counsel, a doctor of medicine specializing in psychiatry, a psychiatric social worker and a welfare officer, under the chairmanship of Mgr. G. A. Tomlinson, Catholic Chaplain to London University.

It would be out of place here to do more than adumbrate either the conclusions which the Committee arrived at or the principles upon which the conclusions were based, both of which can be found in the body of the report itself. It may, however, shed some light both upon the findings of the Committee and the course of the discussions which led to them if a word were said by way of introduction to the report upon the situation which had to be considered.

The existing law treats all homosexual acts committed between male persons of whatever ages as criminal offences. Bearing in mind the principle that to be just the criminal law must be based upon the moral law, but avoiding the false logic of the conclusion that therefore all moral offences may rightly be the subject of civil legislation, the Committee agreed that the end of the civil law was

to maintain and safeguard the common good. Moral offences therefore which of their nature tend to subvert the common good are rightly the subject of criminal enactments and this principle logically implies the conclusion that while homosexual acts which include the corruption of young persons or which constitute an offence against public decency are justly punishable as crimes, acts committed in private by consenting adults do not themselves militate against the common good of citizens and are therefore not justly subject to the criminal law. Admittedly the present law is an expression of detestation of such acts by the normal public, but such a motive is not sufficient reason for making them crimes at law, mortal sins though they are. The witness of the history of certain Puritan States is sufficient warning against the idea that individuals can be made morally good by Act of Parliament.

Further, a law directed against consential acts of homosexuality between adult males in private must depend for its effectiveness either upon a system of police espionage or the activities of the informer, either of which appears to be more directly detrimental to the common good than the evil it is claimed to be by those who would justify such a law. Nor can the fact be overlooked that adultery, an offence which undermines the institution of marriage, and hence constitutes a direct attack upon the common good, is not treated as a crime by the law—an anomaly which shows the law in question as the more inequitable by contrast. The same observation may justly be made with regard to the absence of any law directed against consential homosexual acts between women.

The Committee was also obliged to consider the effects of the present law, notably the evidence of blackmail about which nothing further than the mention need be said. Evidence was also given by a prison doctor of the deleterious effect in many cases of the prison sentence served by persons convicted under this law in heightening rather than mitigating their moral disorder.

The moral problem which the homosexual has to face is not different in degree from that which every unmarried person, man or woman, must confront. The Catholic is taught by his faith that the human will aided by the grace of God and the constant practice of self-control and mortification can both tackle and overcome the problem, and the experience of large numbers of men and women proves this to be no lie. In individual cases the help of the priest and also of the doctor can do much, where there is no

question of harm to the common good; the criminal law can only further the injury it is designed to remedy.

The problem of prostitution is one which is particularly acute for the Church in this country on account of the number of girls coming from Catholic countries who find the trade a more profitable way of making a living than any other, and the remedy is yet to be found. The present law upon the subject takes no cognisance of fornication as such unless the commission involves an offence against public decency; what is proscribed is soliciting and importuning to public annoyance. To such proportions has prostitution grown in London that every Monday morning a solemn farce is enacted at Bow Street at which members of a selected band of prostitutes are charged without witnesses and individually fined forty shillings for this offence, the turn of each coming round periodically. Such a method has the effect of reducing the periodic fine to the category of overhead expenses with the minimum effect upon the offender and brings the whole law into contempt. In the Committee's opinion a more effective way of dealing with the situation would be the abolition of the present practice of automatic summons, and the substitution of the more regular proceeding of requiring witnesses to substantiate the charge and of empowering the Courts to place convicted offenders under the care of the probation officer or welfare worker. The members of the Committee, however, were fully conscious that in making this recommendation they were proposing a measure rather to remedy a legal anomaly than to produce an answer to the fundamental problem. Like homosexuality, prostitution is basically a moral problem, and later remedies are at best but makeshifts for the lack of early moral and religious training in the home.

It has been thought fit to publish the report of the Catholic Committee in THE DUBLIN REVIEW with the permission of the late Cardinal Griffin and the concurrence of the Departmental Committee of the Home Office as the expression of the deeply considered view of this section of priests and laymen on the question of the present law with regard to homosexuality and prostitution. Members of the Committee recognize that their conclusions will not be universally supported; they can claim at least that the recommendations they have made are the fruit of much thought and discussion having always before their minds the moral teaching of the Catholic Church.

REPORT OF THE ROMAN CATHOLIC ADVISORY COMMITTEE ON PROSTITUTION AND HOMOSEXUAL OFFENCES AND THE EXISTING LAW

Section I

Catholic Teaching on Homosexual Offences

I. Homosexual activities and desires to which the informed will gives full consent involve grave sin.

II. The Church refrains from giving official recognition to any theory about the origin of homosexual tendencies and alludes to the unborn weakness of human nature as a result of original sin and attributes evil practices in matters of sex not so much to ignorance of the intellect as to weakness of will exposed to dangerous occasions and unsupported by the means of grace. (Pius XI, *Christian Education of Youth.*)

It is desirable to emphasize that sins of a sexual nature like any others derive from original sin and man who is endowed with free will is not the sport of fate in these matters.

III. The fundamental governing force in man is the soul with its free will and not the instinctive drives of the unconscious. However strong the instinctive drives in man they can be ordinarily governed and controlled by the will informed by grace.

Original sin did not take away from man the capacity or obligation to direct his own actions himself through his soul. Even in cases of psychological illness these forces such as the sexual instinct should not be prematurely considered as a sort of fatality, as a tyranny of the affective impulses streaming forth from the subconscious and escaping completely from the control of the conscious and of the soul. (Papal Address to Psychotherapists, 13.4.53.) That these forces may exercise pressure upon an activity does not necessarily signify that they compel it. (Ibid.)

IV. The freedom of man, notwithstanding these strong tendencies, must be considered to remain intact so that with the help of grace he can avoid formal sin.

V. When endeavouring to help a homosexual person to refrain from giving expression to his wayward impulses it is important to remember that virtue is largely a matter of habit rather than a single instance.

VI. Whilst every sympathy must be shown towards homosexual persons, such persons must not be led to believe that they are doing no wrong when they commit homosexual acts. 'It is never lawful to counsel a person to commit material sin.' (Ibid.)

VII. It is not the business of the State to intervene in the purely private sphere but to act solely as the defender of the common good. Morally evil things so far as they do not affect the common good are not the concern of the human legislator.

VIII. Since public morality belongs to the highest goods of the common weal and of human culture, it is the function of the State as defender of the common good to defend society against morally destructive forces in so far as it is able to do so.

The criterion of what is meant by public good is to be sought in the fact that from a particular mode of conduct there can proceed effects morally harmful to the members of the community who do not possess the necessary power to resist such influences. Individuals whose moral judgement and character are not yet settled are to be protected from situations which would impose too severe a strain upon them.

The State has the right and the duty to protect the sexually immature from premature sexual experience.

IX. In assessing the moral responsibility of individuals for wrong acts done by them it is important to make the distinction between material and formal sin.

Material sin may be defined as a violation of the law without knowledge or consent.

Formal sin is a free and deliberate violation or transgression of a Divine law, or the voluntary transgression of a dictate of conscience.

X. All directly voluntary sexual pleasure outside marriage is sinful.

XI. Crime as such is a social concept not a moral one and therefore is a problem to be tackled by the State with the assistance of its specialists in jurisprudence and psychiatry. Sin as such is not the concern of the State but affects the relations between the soul and God.

XII. The right of the State to punish those who commit crimes is best stated in relation to the legitimate objects of penal sanctions. These are (*a*) retributive, (*b*) deterrent and (*c*) reformative. The second and third of these do not in our day require explicit justification. The first may be debatable but it is surely right that a healthy public opinion should reprobate crime and reasonably require that evil-doers should be justly served. A general assurance to this effect goes some way to control violent reactions and especially with regard to the more detestable offences, to minimize the tendency for individuals to take the law into their own hands.

It is of the first importance, however, that the State should not go beyond its proper limits in this connexion. Attempts by the State to enlarge its authority and invade the individual conscience, however high-minded, always fail and frequently do positive harm. The Volstead Act in the U.S.A. affords the best recent illustration of this principle. It should accordingly be clearly stated that penal sanctions

are not justified for the purpose of attempting to restrain sins against sexual morality committed in private by responsible adults. They are, as later appears, at present employed for this purpose in this country and should be discontinued because:

(*a*) they are ineffectual;
(*b*) they are inequitable in their incidence;
(*c*) they involve severities disproportionate to the offence committed;
(*d*) they undoubtedly give scope for blackmail and other forms of corruption.

XIII. It is accordingly recommended that the Criminal Law should be amended in order to restrict penal sanctions for homosexual offences as follows, namely to prevent:

(*a*) the corruption of youth;
(*b*) offences against public decency;
(*c*) the exploitation of vice for the purpose of gain.

Section II

The Nature of Sex Inversion

I. Sex inversion may be defined as the direction of the psycho-sexual impulse more or less exclusively towards persons of the same sex who should have reached psycho-sexual maturity.

II. Various views exist on the nature of sex inversion.

(*a*) Some authorities regard it as a congenital anomaly. According to this view a certain proportion of the population—a fairly conservative estimate would be 4 per cent—are so constituted that quite regardless of training, environment and in fact all external influences or individual experiences they are quite unable to develop normal heterosexual desires. Such persons, termed 'true inverts', may or may not exhibit physical or temperamental characteristics proper to the opposite sex. All grades are found from physical pseudo-hermaphroditism down to apparent physical and temperamental normality. The origin of this condition is not always clear, although there is much to suggest that it depends primarily on a lack of balance between the various glands of internal secretion. Apart from the misdirection of sexual impulse, inverts may be perfectly normal in every other respect although it is true that moral and social conflicts arising equally from the frustration of their sexual lives and the gratification of their—to them perfectly normal—impulses frequently lead to neurosis, but such neurosis is adventitious rather than part and parcel of their condition.

(*b*) Others who regard sex inversion as a psycho-genetically acquired misdirection of the sexual impulse form three main groups:

(1) Various members of the Freudian School maintain that we are all potentially bisexual, and that we all pass consciously or unconsciously through a homosexual phase. Sexual inverts are peculiar in that they remain stuck at or 'fixated' as the technical term is, or suffer a regression to this level of development. The cause of this developmental anomaly is to be found in the failure to resolve the well-known 'Edipus complex situation'.

(2) The Adlerians interpret sexual inversion in terms of the inferiority complex according to which view homosexual males have a profound distrust in their own essential virility and ability to dominate the opposite sex. They attempt the treatment of inverts by their re-education technique.

(3) A third group maintains that sexual inversion results from the psychical shock associated with homosexual experience occurring in early or adolescent years. However, all the evidence tends to show that such experience in no way determines the direction that the sexual impulse will take in later years. The number of perfectly normal heterosexual adults who have had homosexual experience at various times during childhood and adolescence proves that that factor alone cannot account for inversion. Further we come across a large number of inverts who have either never indulged their homosexual tendencies or who have remained perfectly chaste till adulthood.

III. It is desirable to establish a distinction between sex inversion and homosexuality. The evidence is almost overwhelmingly in favour of the view that a conscious or unconscious phase of homosexuality is common to the race during the years of late childhood or adolescence. Further, a very large number of people experience sexual attraction towards members of both sexes. The term homosexuality should be restricted to homosexual desires or activities occurring in potentially heterosexual or in bisexual individuals. 'Sex inversion' should be applied to a sexual impulse which appears to be congenitally and ineradicably homosexual.

IV. Homosexuality and sex inversion have been known to occur from the dawn of human history. In Athens, for example, and more or less throughout Hellas for two or three centuries prior to her decadence, pederasty was encouraged until a man reached the age of about thirty, when he married as a civic duty. The same practice has been tolerated and is still exceedingly common throughout Islam.

Romantic relationships of the same kind were also the rule between adult Samurai and their pages in feudal Japan. Every culture develops its own code and standards. Our own Christian civilization is based entirely upon a heterosexual attitude and there is no danger of homosexuality being absorbed into its structure. The extent to which penal

sanctions directed against homosexual practices are justified or effectual is a very different question.

V. It is clear then that the specialist in psychological medicine has something to contribute to a solution of the problem of homosexual offences in relation to the law.

Section III

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

I. The existing law does not effectively distinguish between sin, which is a matter of private morals, and crime, which is an offence against the State, having anti-social consequences. In matters of sex this distinction may not always be easy to draw but it is certainly ignored by Section II of the Criminal Law Amendment Act, 1885, which for the first time imposed penal sanctions in respect of acts of gross indecency done by adult consenting males in private.

II. Under the existing law criminal proceedings against adult male persons in respect of consensual homosexual acts in private (whether of the full offence of sodomy or of gross indecency) inevitably fall upon a small minority of offenders and often upon those least deserving of punishment.

III. The Committee recommends that the criminal law be amended so as to exclude consensual acts done in private by adult males and to retain to the full extent penal sanctions to restrain

(*a*) offences against minors;

(*b*) offences against public decency;

(*c*) the exploitation of vice for the purpose of gain.

IV. In connexion with 3 (*a*) the Committee, having taken note of the fact that a valid marriage may be contracted in this country at the age of 16, that the age of consent in France under the Napoleonic Code is 18, and that children are only amenable to the 'care and protection' provisions of the Children and Young Persons Act, 1933, up to the age of 17, nevertheless recommend that for the present purpose male persons should be deemed to be adult at the age of 21.

V. The Committee has reached the conclusions (*a*) that imprisonment is largely ineffectual to reorientate persons with homosexual tendencies and usually has deleterious effects upon them, and (*b*) that a satisfactory solution of the problem is unlikely to be found in places of confinement exclusively reserved for homosexuals. Accordingly, no positive recommendation is made with regard to methods of detention.

VI. The Committee regards with abhorrence arrangements understood to obtain in Denmark whereby homosexuals condemned to imprisonment may obtain release by voluntarily submitting to castration.

VII. The Committee accept the propriety of the use for good cause under medical supervision of drugs to suppress sexual desire and activity, with the consent of the patient. Such treatment is permissible where serious pathological conditions obtain and when other remedies have proved ineffectual.

The Committee has no particular recommendations to make in relation to prostitution. From the point of view of moral theology the same principles apply as are stated above in connexion with homosexuality (Section I, paragraphs III, IV, VII, IX–XIII); the distinction made there between sin and crime is equally valid regarding prostitution. There is a clear duty on the part of the State to protect women from exploitation and to preserve public order.

We do, however, suggest that the existing practice of what may be called automatic prosecution for solicitation and importuning followed by trivial fines serves no useful purpose and is indefensible on any grounds and should be discontinued.

Prosecutions should not be initiated except in cases where satisfactory evidence is available to establish the charge and in such cases the Courts should be empowered to inflict suitable penalties including the power to make probation orders where it is desirable, with or without a condition of residence.

The Report was unanimously agreed by the Roman Catholic Advisory Committee on Prostitution and Homosexual Offences and the existing Law.

(*Signed*)

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THE FUNCTION OF PUNISHMENT

The Discourse of His Holiness Pope Pius XII to the Catholic Jurists of Italy on 5 December 1954

THE question which We shall examine is: the function of punishment, the 'redeeming of the criminal through repentance'—a question which We should like to formulate in this manner: Crime and punishment in their reciprocal relationship. We should wish, that is, to indicate in broad outline the path of a man from the state of non-criminality, through the actual crime, to the state of criminal guilt and its punishment (*reatus culpae et poenae*); and, *vice versa*, the return from this state, through repentance and expiation, to the state of liberation from the crime and punishment. We shall be able then to see more clearly what is the origin of punishment, what is its nature, what its function, what form it should take in order to lead the criminal to his liberation.

I.—THE PATH TOWARDS CRIME AND PUNISHMENT

It is necessary here to make two preliminary remarks.

The problem of crime and of punishment is, first and foremost, a problem concerned with persons, and this under a twofold aspect. The path towards crime has its beginning in the person acting, in his 'Ego'. In the sum of the actions which proceed from the Ego as from a centre of action, there is question here only of those which are based upon a conscious and voluntary determination; that is, acts which the Ego was able to do or not do, those which it does because it has freely determined to do so. This central function of the Ego with regard to itself—even if operating under various influences of a different nature—is an essential element when there is question of true crime and true punishment.

The criminal act, however, is also always an opposition of one person to another, both when the immediate object of the crime is a thing, as in theft, and when it is a person, as in murder; further, the Ego of the person who becomes a criminal, is directed against higher Authority, and therefore in the end always against the authority of God. In this matter, We who have as Our aim the true problem of crime and

punishment properly so-called, prescind from the merely juridical crime and from its consequent penalty.

It is also to be observed that the person, and the function of the person who is the criminal, form a strict unity, which in its turn presents different aspects. Simultaneously, it concerns the psychological, juridical, ethical and religious fields. These aspects can certainly also be considered separately; but in true crime and punishment, they are so closely related among themselves, that only by taking them all together is it possible to have an exact idea concerning the criminal and the question of crime and punishment. It is not even possible, therefore, to treat this problem unilaterally, merely under its juridical aspect.

The path towards crime, therefore, is this: the spirit of a man is found in the following situation: it is faced with the performance or omission of an action, and this performance or omission is presented to it as simply obligatory, as an absolute 'you must', an unconditional demand to be met by a personal decision. The man refuses to obey this demand: he rejects the good, accepts the evil. When the internal resolution is not terminated within itself, it is followed by the external action. Thus the criminal action is accomplished both internally and externally.

As far as the subjective side of the crime is concerned, in order to judge rightly it is necessary to take into account not only the external act, but also the influences, both internal and external, which have co-operated in the decision of the criminal, such as innate or acquired disposition, impulses or obstructions, impressions from education, incitement from persons or things in the midst of which the person lives, circumstantial factors, and, in a particular way, the habitual and actual intensity of the will-act, the so-called 'criminal urge', which has contributed to the accomplishment of the criminal act.

Considered in the object affected by it, the criminal action is an arrogant contempt for Authority, which demands the orderly maintenance of what is right and good, and which is the source, the guardian, the defender and the vindicator of order itself. And since all human Authority must be derived ultimately from God, every criminal act is an opposition to God Himself, to His supreme law and sovereign majesty. This religious aspect is inherently and essentially connected with the criminal act.

The object affected by this act is also the legally established community, if and in as far as it places in danger and violates the order established by the laws. Nevertheless, not every true criminal act, as described above, has the character of a crime against the public law. Public authority must be concerned only with those criminal actions which injure the orderly society as established by law. Hence the rule concerning a juridical crime: No crime where there is no law. But such a violation, if it is otherwise a true criminal act in itself, is also always

a violation of the ethical and religious norm. It follows, therefore, that those human laws which are in contradiction to divine laws, cannot form the basis of a true criminal act against the public law.

Connected with the concept of the criminal act, is the concept that the author of the act becomes deserving of punishment (*reatus poenae*). The problem of punishment has its beginning, in an individual case, at the moment in which a man becomes a criminal. The punishment is the reaction, required by law and justice, to the crime: they are like a blow and a counter-blow. The order violated by the criminal act demands the restoration and re-establishment of the equilibrium which has been disturbed. It is the proper task of law and justice to guard and preserve the harmony between duty, on the one hand, and the law, on the other, and to re-establish this harmony, if it has been injured. The punishment in itself touches not the criminal act, but the author of it, his person, his Ego, which, with conscious determination, has performed the criminal act. Likewise, the punishing does not proceed, as it were, from an abstract juridical ordinance, but from the concrete person invested with legitimate authority. As the criminal act, so also the punishment opposes person to person.

Meaning and purpose of punishment

Punishment properly so-called cannot therefore have any other meaning and purpose than that just mentioned: to bring back again into the order of duty the violator of the law, who had withdrawn from it. This order of duty is necessarily an expression of the order of being, of the order of the true and the good, which alone has the right of existence, in opposition to error and evil, which stand for that which should not exist. Punishment accomplishes its purpose in its own way, in so far as it compels the criminal, because of the act performed, to suffer, that is, it deprives him of a good and imposes upon him an evil. But in order that this suffering may be a punishment, the causal connexion with the crime is essential.

II.—THE STATE OF GUILT AND OF PUNISHMENT

We add that the criminal has brought about, by his act, a state which does not automatically cease when the act itself is completed. He remains the man who has consciously and deliberately violated a law which binds him (*reatus culpae*), and simultaneously he is involved in the penalty (*reatus poenae*). This personal condition endures, both in his relation to the authority on which he depends, or better, the human authority of public law in so far as this has a share in the corresponding penal process, and at all times also, in his relation to the supreme divine authority. Thus there is brought about an enduring state of guilt and

punishment, which indicates a definite condition of the guilty party in the eyes of the authority offended, and of this authority with respect to the guilty party (St. Thomas: *Sum. Theol.* III, q. 69, a. 2, obj. 3 et ad 3).

An attempt has been made—based on the idea that time and space, formally considered, are not simply realities, but instruments or forms of thought—to draw the conclusion that, after the cessation of the sinful action and of the actual punishment, one can no longer speak of any permanent quality truly belonging to them in the real order, and therefore, of any state of guilt or punishment. If this were so, one should have to abandon the principle: 'What's done cannot be undone.' Applied to a spiritual action—such as a criminal act is, of its very nature—this principle would be based (as is asserted) on a false valuation, and on an erroneous use, of the concept of time. We would be going outside the limits of Our discourse, if We were to treat here of the question of space and time. It will be enough to note that space and time are not simply thought-forms, but have a basis in reality. At any rate, the conclusion which is drawn from them against the existence of a state of guilt, is invalid. Undoubtedly man's fall into sin takes place on this earth in a definite place and at a definite time, but it is not a quality of that place or that time, and therefore, its cessation is not connected with the cessation of a 'here' and a 'now'.

What We have so far explained concerns the essence of the state of guilt and punishment. On the other hand, by virtue of the special prerogative of the higher authority, to which the culprit has refused due obedience and submission, its indignation and disapproval turn not only against the action, but against its author, and against his person on account of the action.

With the act of crime is immediately linked, as was just now indicated, not the punishment itself, but the guiltiness and punishableness of the action. None the less, there is not excluded a penalty which, by virtue of a law, is incurred automatically at the moment of the criminal action. In Canon Law are recognized penalties (*'latae sententiae'*) liable to be incurred by the very fact of committing a sin. In civil law, such a penalty is rare, nay, in some legal systems, unknown. Always, moreover, this automatic incurring of a penalty supposes real and serious guilt.

Presuppositions of every penal sentence

Consequently, it is customary for the penalty to be imposed by a competent authority. That presupposes: a penal law actually in force, a legal person invested with authority to punish, and in him, certainty regarding the act to be punished, as much from the objective standpoint, that is to say, concerning the actual commission of the crime contemplated by the law, as from the subjective standpoint, that is, from a

consideration of the culpability of the guilty one, its gravity and extension.

This knowledge, necessary for pronouncing a penal sentence, is, before the court of God, the Supreme Judge, perfectly clear and infallible. and to have called attention to it cannot be without interest to the jurist. God was present to the man in the internal resolve, and in the external execution of the criminal act, having all fully within His gaze down to the last detail; all is before Him now, as in the moment of the act. But this knowledge in absolute fulness and sovereign certainty, at every instant of life, and over every human act, is proper to God alone. Because of this, there belongs to God alone the final judgement on the value of a man, and the decision on his ultimate fate. He pronounces the judgement as He finds the man at the moment He calls him to eternity. Yet an infallible judgement of God exists also during life on earth, and not only taken as a whole, but over every sinful act, together with the corresponding penalty; yet, in spite of the ever ready divine disposition to forgiveness and remission, in some cases He carries it into effect during the present life of the man.

Moral certainty in human judgements

The human judge, on the other hand, since he does not possess the omnipresence and omniscience of God, has the duty of forming for himself, before issuing the judicial sentence, a moral certainty, that is, one which excludes every reasonable and serious doubt about the external fact and the internal guilt. But he does not have immediate insight into the interior dispositions of the accused at the very moment of the crime; rather, in most cases the judge is not in a position to reconstruct them with absolute clarity from the arguments offered as proof, nor, often enough, from the very confession of the delinquent. But this difficulty should not be exaggerated, as though it were ordinarily impossible for a human judge to attain sufficient certainty, and therefore a solid foundation for a sentence. According to the cases, the judge will not fail to consult renowned specialists on the capacity and responsibility of the presumed criminal, and to take into consideration the findings of the modern sciences of psychology, psychiatry and characterology. If, despite all these precautions, there still remains a grave and serious doubt, no conscientious judge will proceed to pronounce a sentence of condemnation, all the more so when there is question of an irrevocable punishment, such as the death penalty.

In most crimes, external behaviour is already sufficient manifestation of the internal motive which was responsible for the crime. Therefore, ordinarily, one can, and at times one should, deduce a substantially sound conclusion from the external; otherwise juridical actions would be rendered impossible for mankind. On the other hand, one should not forget that no human sentence finally and definitively

settles the fate of a man, but only the judgement of God, both for single acts and for those of a lifetime. Consequently, in every case where human judges have erred, the Supreme Judge will re-establish equilibrium, first of all, immediately after death with the definitive judgement on the whole life of a man, and then later and more fully in the final and universal judgement before all men. This is not to be understood as though it dispenses a judge from conscientious and exact efforts in ascertaining the facts. Still, there is something magnificent in the realization that there will be a final equation of guilt and punishment which will be absolutely perfect.

Whoever has the duty of guarding the accused person in protective custody, should not fail to bear in mind the painful burden which the investigation itself inflicts upon the prisoner, even when those methods of investigation are not being employed which cannot be justified in any way. Ordinarily, these sufferings are not taken into account when the penalty is finally inflicted, a consideration which would be difficult to realize. However, one should not lose sight of them.

In external juridical matters, the sentence of the court is definitive for all that concerns guilt and punishment.

Some proposals of reform

In your sessions, gentlemen, there was manifested the desire that by means of legislation some relaxation be introduced of the obligation which binds the judge to the articles of the penal code, not of course in the way the duty of the praetor was interpreted by Roman Law, '*adjuvandi, supplendi vel corrigendi iuris civilis gratia*' ('to help, supplement or correct civil law'), but in the sense of a freer evaluation of the objective facts over and above the general juridical limits set by legislative authority. Thus, even in penal law, a kind of '*analogia iuris*' would be applicable, and the discretional power of the judge would be extended beyond the limits hitherto accepted as valid. It is believed that in such a way there would result a notable simplification of penal laws and a considerable lessening of the number of particular crimes, and, at the same time, it would help to make people understand better what exactly the State considers deserving of punishment, and for what reasons.

For this proposition a certain foundation can surely be admitted. In any case, the ends which this proposition has in view, namely the simplification of the norms of law, the prominence given not only to strict formal law but also to equity and spontaneous good judgement, the better adaptation of penal law to popular sentiment: these ends, We say, are not open to objection. The difficulty would arise not so much on the theoretical side as from the form of its realization, which, on the one hand, should preserve the guarantees of the existing order, and, on the other hand, take into account the new needs and reasonable

desires of reform. Canon Law offers examples in this sense, as is evident from canons 2220–2223 of the Code of Canon Law.

Variety and efficacy of penalties

In what concerns the various kinds of penalties (penalties concerning honour [juridical capacity], inheritance, personal freedom, body and life [bodily punishment is not provided for in Italian Law]), in Our explanation We will limit Our remarks concerning them to the nature and purpose of punishment. Since, however, as We have already noted, jurists do not hold one opinion concerning the meaning and purpose of punishment, it follows that their views of various punishments are also different.

Up to a certain point it may be true that imprisonment and isolation, properly applied, is the penalty most likely to effect a return of the criminal to right order and social life. But it does not follow that it is the only just and effective one. What We said in Our discourse on international penal law, on 3 October 1953, referring to the theory of retribution (cf. *Discorsi e Radiomessaggi*, Vol. XV, pp. 351, 353), is to the point here. Many, though not all, reject vindictive punishment, even if it is proposed to be accompanied by medicinal penalties. We then declared that it would not be just to reject completely, and as a matter of principle, the function of vindictive punishment. As long as man is on earth, such punishment can and should help towards his definitive rehabilitation, provided man himself does not raise barriers to its efficacy, which, indeed, is in no way opposed to the purpose of righting and restoring harmony. This, as We already pointed out, is an essential element of punishment.

Execution of penalties

The natural complement of inflicting punishment is that it be carried out on the understanding that it is the effective privation of a good, or the positive imposition of an evil, established by competent Authority as a reaction to the criminal action. It is a weight placed to restore balance in the disturbed juridical order, and not aimed immediately at the fault as such. The criminal action has revealed in the guilty person an element that clashes with the common good and with well ordered life with others. Such an element must be removed from the culprit. The process of removing it may be compared with the intervention of a doctor in the body, an intervention which may be painful, especially when the cause of sickness, and not the symptoms, must be dealt with. The culprit's own good, and, perhaps more so, that of the community, demands that the ailing member become sound again. The meting out of punishment, however, no less than the healing of the sick, demands a clear diagnosis of causes, not merely of symptoms,

a therapy adapted to the ailment, a cautious prognosis, and a suitable prophylaxis.

Reactions of the condemned

The meaning and purpose of the punishment, and the intention of the punishing authority, which is usually in agreement with that purpose, indicate the attitude the culprit should have; it is to acknowledge the evil which provoked the penalty; of aversion from, and repudiation of, the evil deed itself; of repentance, expiation and purification, and purpose of future amendment. That is the path the condemned man should follow. The problem, however, is, which will he really take? Turning Our attention to such a question, it may be helpful to consider the suffering caused by the punishment in its various aspects: psychological, juridical, moral, and religious, though normally these various aspects are in the concrete closely intertwined.

. . . in the psychological aspect

Psychologically, nature spontaneously reacts against the physical evil of the penalty, the reaction being stronger in proportion to the suffering imposed on human nature as such, or on the individual temperament. Along with this, there is a fixing, likewise spontaneous, of the culprit's attention on the criminal action which caused his punishment, and whose connexion is now vividly before his mind, or at least is now uppermost in his conscience.

Following such more or less involuntary attitudes, there appears the conscious and willed reaction of the Ego, the centre and source of all personal actions. This higher reaction can be a voluntary, positive acceptance, as is shown by the good thief on the cross: '*Digna factis recipimus*'—'We receive what our deeds deserve' (Luke 23. 41). It may be mere passive resignation, or, at times, a deep bitterness, a total interior collapse. Again, it may be a proud resistance, which at times becomes a hardening in evil. Finally, it may be a complete revolt, savage but powerless. Such psychological reactions take different forms, depending on whether there is question of a punishment, of long or short duration, or short in time maybe, but surpassing in height and depth all time-measure, for example, the pain of death.

. . . in the juridical sphere

Juridically, execution of the punishment implies the valid, effective action of the higher and stronger power of the juridical community (or rather, of the one possessing authority in this community) on the lawbreaker, who, obstinately opposed to the law, has culpably violated the established juridical order, and now is forced to submit to the prescriptions of that order, for the greater good of the community and of the criminal himself. Thus the idea and necessity of penal law is clear.

On the other hand, justice demands that in carrying out the provisions of penal law, any increase of those punishments provided for the case, as also any arbitrary harshness, annoyance or provocation, be avoided. Higher Authority must see to the carrying out of the punishment, and give it a form which will correspond to its purpose, not in an unyielding fulfilment of minute prescriptions, but in adapting it, so far as possible, to the person to be punished. Indeed, the gravity and dignity of the power to punish, and its exercise, naturally indicate that the public authority view, as its main duty, contact with the person of the guilty one. Judgement on him must be made, therefore, according to special circumstances, if the functioning of that office is to be fully cared for through the proper channels. Very often, if not always, one aspect of punishment must be entrusted to others, especially the real and effective care of souls.

Some have proposed that it would be well to establish a religious congregation or a secular institute which would care more extensively for the psychological assistance of prisoners. Undoubtedly, nuns have long been bringing the warmth and good influence of Christian Charity to women's prisons; for Us this is a good opportunity to express to them Our gratitude. Still, the above-mentioned proposal seems worthy of deep study, and We express the hope that a like foundation, no less than those religious and ecclesiastical associations already active in houses of detention, will give full play to the energies released by the Christian faith; We hope, too, that all the solid results produced by investigation and experience in the field of psychology, psychiatry, pedagogy and sociology, will be used to the advantage of the imprisoned. This naturally presupposes a thorough professional training in those called to such work.

No one who is in any way familiar with the actual application of punishment will nurse Utopian dreams of great success. The good will of the prisoner must match any outside influence, but that cannot be had by force. May divine grace arouse and direct that good will!

. . . *from the moral point of view*

The moral aspect of the carrying out of punishment and the sufferings they effect is in relation to the purpose and principles which should determine the dispositions of the condemned.

To suffer in this life means practically a turning of the soul within itself; it is a path which drives one from the superficial to deep within oneself. Considered in that light, suffering has great moral value. Presupposing a right intention, its free acceptance is a priceless act. '*Patientia opus perfectum habet*,' writes St. James (1. 4). That is true also of the sufferings caused by punishment, which can bring progress to one's interior life. By its nature it is a reparation and a restoration—through and in the guilty person, and willed by him—of the culpably

violated social order. The essence of the return to good consists more exactly in breaking away from the fault than in the free acceptance of suffering. Suffering, however, can lead to this break, and turning away from one's wrongdoing can, in its turn, be of great moral value, and facilitate and elevate its moral effectiveness. Thus suffering can reach moral heroism, heroic patience, and expiation.

In the area of moral reaction, however, contrary manifestations are not lacking. Often the moral value of punishment is not even recognized; often it is consciously and deliberately rejected. The criminal will neither recognize nor confess his guilt, will in no way submit to good, wills no expiation or repentance for his own crimes.

And now a few words on the religious aspect of the suffering which results from punishment.

. . . the religious element

Every moral transgression of man, even if materially committed only in the sphere of legitimate human laws and then punished by men according to positive human law, is always a sin before God, and calls down upon itself from God a punitive judgement. Not to take this into account is contrary to the interest of public authority. Sacred Scripture (Romans 13. 2–4) teaches that human authority, within its own limits, is, when there is question of inflicting punishment, nothing else than the minister of divine justice. 'For he is God's minister: an avenger to execute wrath upon him that doth evil.'

This religious element in the meting out of punishment finds its expression and realization in the person of the guilty one, in so far as he humbles himself under the hand of God, Who is punishing him through the instrumentality of men; thus he is accepting his sufferings from God, offering them to God as a partial payment of the debt which he has contracted before God. Accepted in this way, punishment becomes for the guilty person a source of interior purification on this earth, of complete conversion, of resolution for the future, a bulwark against possible relapse. Suffering thus accepted with faith, repentance and love, is sanctified by the pains of Christ and supported by His grace. This religious and holy meaning of suffering due to punishment is impressed upon us by the words which the good thief addressed to his crucified companion: '*Digna factis recipimus*'—'We receive the due rewards of our deeds', and by his prayer to the dying Redeemer: '*Domine, memento . . .*'—'Lord, remember me when thou shalt come into thy kingdom': a prayer which, when weighed upon the scales of God, brought to the repentant sinner the assurance of the Saviour: '*Hodie mecum eris in paradiso*'—'This day thou shalt be with me in paradise' (Luke 23. 41–43); the first plenary indulgence, as it were, granted by Christ Himself.

May all who have fallen under the blows of human justice, suffer

the punishment inflicted upon them not simply as under duress, not without God and without Christ, not in revolt against God, not spiritually shattered by anguish; but may it open for them the way which leads to holiness.

III.—LIBERATION FROM THE STATE OF GUILT AND OF PUNISHMENT

It remains now to speak of the final part of the path which We wished to point out to you, that is, the return from the state of guilt and punishment to that of deliverance.

Deliverance from guilt and from punishment are not necessarily identified, either in concept or in reality. Apart from the fact that, in the sight of God, the remission of eternal punishment is always connected with the remission of grave guilt—guilt may be remitted without necessarily implying the extinguishing of the penalty. On the other hand, the penalty may have been paid without the guilt having ceased to exist in the inner being of the culprit.

Now, the return to the juridical and ethical order consists essentially in the deliverance from guilt, and not from punishment.

(*a*) DELIVERANCE FROM GUILT

In the exposition of the first part of this path, We pointed out the internal and external character of the guilty act, that is, in relation to its author, as also in its relations to higher authority, which is, in the last analysis, the authority of God Himself, Whose majesty, justice and holiness are slighted and offended in every culpable act.

In what does deliverance from guilt consist?

Deliverance from guilt must therefore reintegrate the relations disturbed by the culpable act. If we are dealing with a simple, real debt, that is, one that is concerned with purely material considerations, it may be fully paid by the handing over of the thing required, without the necessity of any personal contact with the other party. If, however, there is question of a personal offence (either by itself or connected with a real debt), then the culprit is bound to an obligation, in the strict sense, to the person of the creditor. It is from this strict obligation that he must be released. And because, as We have already said, this obligation has a psychological, juridical, moral, and religious aspect, so his deliverance must have a like aspect.

Guilt, however, in its internal element, also implies in the culprit a state of enslavement and of bondage on his part to the object to which

he has given himself in the performance of the culpable act; that is, in substance, an enslavement to a pseudo-Ego whose tendencies, impulses and ends are in man a caricature of the genuine Ego, intended by the Creator and by nature only for the good and the true. This contradicts those norms of the right path according to whose direction man, made in the image of God, should act and form himself. From this enslavement also must there be effected a psychological, juridical, moral, and religious deliverance.

In human law, we may speak of a kind of deliverance from guilt, when the public authority no longer proceeds against the culpable act; for example, even without regard to the actual internal dispositions of the culprit, by positive remission of the guilt on the part of authority, or because there has expired the period established by the law, within which exclusively the same authority intends, under certain conditions, to bring before its tribunal, and to pass judgement upon, the violation of the law that has taken place. However, this way does not constitute an interior conversion, a *catharsis*, a release of the Ego from its interior slavery, from its will to evil and to law-breaking. Now, it is only to this deliverance from guilt in its proper meaning, to this *catharsis* (that is, change of mental attitude), that We would wish to draw attention here.

. . . *psychologically*

Psychologically considered, the liberation from guilt is the abandonment and retraction of the perverse will freely and consciously placed by the Ego in the culpable act, and the renewed intention to will what is right and good. This change of will presupposes a return into oneself, and hence an understanding of the evil and culpability of the resolution formerly taken against the good recognized as obligatory. There is, together with such understanding, the reprobation of the evil done, repentance as directly willed sorrow, deliberate regret in the soul for the evil perpetrated because it was wicked, contrary to law, and, in fine, contrary to God. In this *catharsis* of the inner being, there is also accomplished, and included, a withdrawing from the false good to which man had turned in his guilty act. The culprit begins to submit himself to the order of justice and right, in obedience to its author and guardian, against whom he had rebelled.

This leads psychologically to the final step. Since the culpable act, as already mentioned, is not the offence directed against an abstract norm of law, but is, in substance, a stand against the person of the commanding or prohibiting authority, complete conversion tends, through psychological necessity in one form or another, towards the person of the offended authority with the explicit or implicit sorrowful confession of the fault, and with interior petition for remission and pardon. Holy Scripture gives us brief and classic examples of such

repentance, like the words of the publican in the Temple: '*Deus, propitius esto mihi peccatori*'—'O God, be merciful to me a sinner!' (Luke 18. 13), or the words of the prodigal son: '*Pater, peccavi*'—'Father, I have sinned' (Luke 15. 21).

In spite of this, when considered under the purely psychological aspect, the perverse will expressed in the culpable act can end in another way without attaining release from guilt. The culprit no longer thinks of his act, but he has not actually retracted it; it has simply ceased to weigh upon his conscience. Now, it should be clearly stated that such a psychological process does not constitute a release from guilt, just a falling asleep in the evening does not signify or obtain the removal, much less the suppression, of the evil committed during the day. Nowadays, some will perhaps say that the guilt has been submerged in the subconscious or the unconscious. But it is still there.

Nor would any better result be obtained with the attempt to suppress the psychological awareness of guilt by means of auto-suggestion or external suggestion, or even by means of clinical psychotherapy, or psychoanalysis. A real, free, guilty will cannot be psychologically corrected or suppressed by insinuating the persuasion that it has never existed. We have indicated the deplorable consequences of a like treatment of the question of guilt, in the discourse addressed to the Fifth International Congress of Psychotherapy and Clinical Psychology, 15 April 1953 (cf. *Discorsi e Radiomessaggi*, Vol. XV, 67 et seq.).

A final observation must yet be made on this question of psychological release from guilt. A single, fully conscious and free act can contain all the psychic elements of a true conversion; but its depth, firmness and extent can present defects which, if not essential, are at least appreciable. A profound, extended, and lasting deliverance from guilt is often a lengthy process, which only gradually reaches maturity, particularly if the culpable act has been the fruit of an habitual disposition of the will. The psychology of relapses offers more than sufficient material for proof on this point, and the supporters of the purifying, educative, and strengthening function of a somewhat lengthy imprisonment find in these experiences a confirmation of their theory.

. . . *juridically*

Juridical deliverance from guilt, as distinct from the psychological conversion that is accomplished in the intimate will of the culprit, is directed essentially to the higher authority, whose requirements for observance of established norms have been slighted or violated. Private violations of legal rights, if they have occurred in good faith or otherwise do not prejudice the common good, are settled privately between the parties or by means of a civil action. They are not ordinarily the object of penal law.

In the analysis of the culpable act, We have already pointed out

that it constitutes the withdrawal and the negation of due subordination, due service, due devotion, due respect and homage; that it is objectively an offence against the loftiness and majesty of the law, or rather of the law's author, guardian, judge, and vindicator. The demands of justice, and hence juridical deliverance from guilt, require that as much service, subordination, devotion, homage and honour be restored to authority, as were taken from that authority by the guilty act.

This satisfaction may be performed freely; it may also, in the suffering endured because of the penalty inflicted, be to a certain degree forced; it may at one and the same time be forced and free. Law, in modern nations, does not attach much importance to voluntary reparation. It is content to have the will of the culprit, by means of the penalty suffered, submit to the powerful will of public authority, and to re-educate his will in this way to work, to social relationship, to right action. It is not to be denied that such a method of procedure can, by reason of immanent psychological laws, lead to an interior reform, and hence to an interior liberation from guilt. But that this must happen, or regularly does happen, is still to be demonstrated. In any event, not to take into consideration, as a matter of principle, the will of the culprit to give satisfaction in so far as sound juridical sense and violated justice require, points to a deficiency and a gap, the bridging of which is earnestly demanded by the interests of doctrine, and of fidelity to the fundamental principles of penal law.

However, juridical release from guilt comprises not only the will to perform the required reparation, but the actual reparation itself. Here, science and the circumstances of concrete life are frequently confronted by a difficult question: what should be the rule in the event of moral or physical inability to perform such reparation? Must we have recourse to some manner of compensation or substitution, or may the exigencies of violated law be left without reparation? We have already indicated that man, by means of a culpable act committed with full responsibility, is capable of offending or of destroying certain good and juridical obligations, but, after the fact, he is often no longer in a position to provide adequate satisfaction. This is true in the instance of murder, of privation of sight, of mutilation, of complete sexual violation, of adultery, of definitive destruction of another's good name, of the declaration of an unjust war, of the betrayal of State secrets, of certain forms of *lèse-majesté*, and of other like guilty acts. The law of retaliation would inflict a proportionate evil on the culprit. However, by this alone the one injured in his rights would not receive reparation, nor have his rights restored. But, prescinding from the fact that adequate indemnity is not impossible in all cases, it should be noted that judgement on the guilt regards not so much the damaged good of the other party, but principally the person of the culprit and his perverse will exercised to

his own advantage. In opposition to this, is the offering or reparation made by the culprit at his own expense, from his personal being, property and ability, for the benefit of another, that is, in every case, of the violated law, namely, of the superior authority. Thus, active reparation which includes the interior conversion of the will, is for the culprit who at his own expense performs the required satisfaction, the second of the two above-indicated elements which brings about release from guilt. The same cannot be said of purely passive reparation, when the culprit is forced to bow beneath the suffering that this reparation implies. This purely passive satisfaction, from which any element of voluntary and repentant will is lacking, is thus deprived of the essential element of release from guilt. Consequently, the culprit remains in his guilty condition.

We have many times pointed out that every grave guilty act is, in the last analysis, an offence before God, Who has an absolute, because divine, right to obedience and submission, to service and praise, and Who as Author, Guardian, Judge, and Avenger of the juridical order, makes known to the culprit His demands with that unconditional absoluteness which is proper to the intimate manifestations of conscience. In the guilty resolve of the Ego, man slights God Who thus reveals Himself, he leaves aside the infinite good, the absolute majesty, and in this way places himself by his action above God. But if man repents and returns to his proper subordination before the majesty of God, if, in conscious and complete surrender of his Ego to the supreme infinite good, he detaches himself from his culpable act in its deepest roots in order once again to be free in good and in his God, he nevertheless finds it impossible to make reparation by his own powers (that is, from the capacity of his own being, will and potency) in any fashion proportionate to that which he has committed in the sight of God by his act. He has offended and slighted an absolutely infinite good, an absolutely unlimited right, a supreme majesty. In the gravity of his fault there thus intervenes this absolute infinity, while anything that man might offer or actuate is essentially, intensively and extensively, finite. Even were such reparation to endure until the end of time, it can never arrive at an equality—*tantum quantum*—between the exigency of God and the offering or reparation of man. God has bridged this abyss; He has put into the hands of finite man an infinite price; He has accepted as an offering of reparation for guilty man the ransom offered by Christ, which is superabundant, because it is of infinite value in submission, honour, and in giving glory, by reason of its being the fruit of the hypostatic union. As long as time will endure, this ransom remits the guilt, before God, of him who repents, through the merits of Jesus Christ.

Let it not be said that these theological and religious considerations lie outside the field and the interests of science and juridical practice. Doubtless a sharp distinction of competencies is an advantage to life

and to any true science; but in this self-limitation, one must not reach the point of denying or ignoring explicitly inseparable connexions which, by intrinsic necessity, are manifested on every side. In every real offence, in whatever material field it may have taken place, there is contained a relation with the ultimate requirement of all law and of all order. It is a characteristic or prerogative of the world of law that there is nothing in it which, in its fundamental structure, has been created without this supreme requirement, or which, in its final analysis, can be made intelligible without this transcendent relation. In this, there is no debasement, but rather an elevation of law and of juridical science, for which total laicization is an impoverishment, not an enrichment. The ancient Romans united law and right (*ius ac fas*), notwithstanding the difference in concepts, and they always conceived them as related to the deity. If now modern depth-psychology is right, there is in the innate dynamisms of the subconscious and the unconscious a tendency which draws towards the transcendent and makes the essence of the soul gravitate towards God. The analysis of the guilt-process and of deliverance from guilt reveals the same tendency towards the transcendent. This analysis brings forward considerations and aspects which the science and practice of penal law do not, of course, have to treat of directly, but about which they should have sufficient knowledge, in order that others may make them useful for the purpose of executing the penalty, and so apply them to the advantage of the culprit.

. . . morally

Moral deliverance from guilt coincides substantially, for the most part, with what We have already said concerning psychological and juridical deliverance. It is the reprobation and withdrawal of the positive contempt and violation of the moral order caused by the culpable act; it is the conscious and voluntary return of the penitent culprit to submission and conformity with the ethical order and what it must, of obligation, demand. There are comprised in these positive acts the endeavour and the offering of the guilty one to satisfy the just demands of violated law, of the ethical order, or better, of the Author, Lord, Guardian, and Vindicator of that order. And there appears the conscious will and resolution of the culprit to be faithful in future to the precepts of what is right and good. In its essential parts, then, this deliverance consists in that interior disposition which has been indicated in the Statement presented by you as the purpose and the fruit of the right fulfilment of the penalty, even though it is here considered and circumscribed under a slightly different point of view.

. . . religiously

Finally, by religious deliverance, there is understood release from that interior guilt which burdens and binds the person of the culprit in

the sight of God, that is to say, before the supreme and ultimate command and essential of all law and of every moral obligation, Who, being infinite, covers and protects His will and His law, which has its origin either immediately in Himself, or mediately in some legitimate human authority within the area of its own competence. How man can free himself or be freed from his offence against God, has been already sufficiently explained in the second point, concerning the juridical aspect. But if this final religious deliverance is not manifested to the culprit, or at least if the way to such is not pointed out or made smooth—if only by means of a long and severe penalty—then in such a case very little (one might say, nothing) is offered to guilty 'man' in his punishment, however much one may talk of psychic cure, of re-education, of social formation of the person, of emancipation from aberrations and from enslavement to himself. Doubtless these expressions mean something that is good and important; but for all that, man remains in his guilt before the supreme necessity, upon which his final destiny depends. This necessity can wait, and often does wait for a long time, but in the end it consigns the culprit to the guilt from which he is unwilling to cease, and to the consequences of that guilt. It is indeed sorrowful to have to say about a man: '*bonum erat ei, si natus non fuisset homo ille*'—'It were better for that man if he had never been born' (St. Matthew 26. 24). Therefore, if someone or something can contribute towards warding off such an evil, even though it be penal law or the execution of a lawful penalty, no effort should be spared. All the more, since God, during this life, is always most willing to bring about a reconciliation. He urges man to accomplish internally the psychic withdrawal from his senseless act; He offers to welcome him once again, if he repents, into His friendship and His love. May human penal law, in its judgements and in the execution of those judgements, never forget the man in the culprit, and never omit to strengthen him and assist him to return to God!

(*b*) DELIVERANCE FROM THE PENALTY

The return from the state of guilt and of punishment necessarily includes release not only from the guilt, but also from the penalty; only thus is there obtained that '*restitutio in integrum*', as it were, a restitution to the original state or condition of non-culpability, and hence of non-penalty.

Eternal punishment in the divine law

Recent facts and statements suggest to Us at this point a brief declaration. Not every penalty that is incurred bears within itself its own remission. Revelation, and the teaching authority of the Church establish clearly that, after the end of this life on earth, those who are

burdened with grave guilt will receive from the Most High God a judgement and an execution of penalty from which there is no release or condonation. God could, in the next life, also remit such a punishment; everything depends on His freewill; but He has never granted it, and will never do so. There is no point in discussing here whether this fact can be established with certainty by the force of reason alone—as some assert—while others consider it doubtful. But both opinions contain, in their arguments based on reason, considerations which indicate that such a divine disposition is in no way contrary to any of God's attributes: neither to His justice or His wisdom, neither to His mercy or His goodness. Furthermore, these considerations show that the divine disposition is by no means opposed to the human nature bestowed by the same Creator, with its absolute metaphysical purpose directed to God, with the impulse of the human will towards God, with the physical freedom of the will rooted and always abiding in created man. All these reflections may perhaps leave in man, when he makes his judgements relying on his own reason alone, a final question, not so much about the possibility, but rather about the reality of such an inflexible decree of the supreme Judge. Hence it will not arouse too much astonishment if a noted theologian could write at the beginning of the seventeenth century: 'There are four mysteries of our most holy Faith, which are most difficult for the human mind to believe: the mystery of the Trinity, of the Incarnation, of the Eucharist, and of eternal punishment' (Lessius, *De Perfectionibus moribusque divinis*, lib. XIII, cap. xxv). Nevertheless, the fact of the unchangeableness and the eternity of that judgement of reprobation and of its fulfilment is beyond dispute. The discussions which have arisen because of a recently published book (Giovanni Papini, *Il Diavolo*—Vallecchi, 1954) frequently portray a grave lack of understanding of Catholic doctrine, and they are founded on premises that are either false or falsely understood. In the present instance, the supreme Legislator, in the use of His sovereign and absolute power, has established the unending validity of His judgement and of its execution. Hence this limitless duration is the law now in force.

Various forms of cessation of punishment in human law

But let us now turn to the field of human law, which is the principal object of the present discourse. As We have already indicated, release from guilt and release from punishment do not always coincide. The guilt may come to an end and the penalty continue, and then, on the other hand, the guilt may continue in force while the penalty terminates.

There are various forms of cessation of punishment. It is first of all clear that such cessation is reached automatically at the moment in which the penalty inflicted has been paid, or when the period of time originally set down has been passed, or else when its continuance (some-

times its very execution) was linked with a condition, either resolutive or suspensive, and this condition has been sufficiently fulfilled.

The remission of the penalty

Remission is another form of cessation of the penalty, by means of an act of the competent higher authority. This may take the form of a favour, an indult or an amnesty, which is somewhat analogous, in the field of religion, to the 'indulgence'. The power to issue such acts of clemency does not rest with the judge who has pronounced the sentence of condemnation, applying to the individual case the penalty established in law. Per se, it resides with the power that judges and punishes in its own name and in virtue of its own law. Hence the right to remit the penalty avails ordinarily in the life of the State as something reserved to the supreme authority. That authority can exercise this right by means of a general decree or by one concerned with an individual case.

Certain favours or mitigations in the execution of the penalty, which leave its substance unchanged, but which are granted to the culprit by reason of good conduct or for other motives, are not included under the heading of remission or condonation. Besides, remission of the penalty in the proper sense is applied both to 'medicinal penalties' and also to 'vindictive penalties', where these latter are admitted.

The final stage of man's road through guilt and punishment leads anew to the problem, already mentioned several times, of the highest aim or object of the penalty, and particularly about the sense, or according to some, the non-sense, of a purely vindictive penalty.

Medicinal and vindictive penalties

In Our discourse of 3 October 1953, to the Sixth International Congress of Penal Law (*Discorsi e Radiomessaggi*, Vol. XV, p. 352), and also on the present occasion (*Osservatore Romano*, 6–7 December 1954), we called attention to the fact that many, perhaps the majority, of civil jurists reject vindictive punishment; We noted, however, that perhaps the considerations and arguments adduced as proof were being given a greater importance and force than they have in fact. We also pointed out that the Church in her theory and practice has maintained this double type of penalty (medicinal and vindictive), and that this is more in agreement with what the sources of revelation and traditional doctrine teach regarding the coercive power of legitimate human authority. It is not a sufficient reply to this assertion to say that the aforementioned sources contain only thoughts which correspond to the historic circumstances and to the culture of the time, and that a general and abiding validity cannot therefore be attributed to them. The reason is that the words of the sources and of the living teaching-power do not refer to the specific content of individual juridical prescriptions

or rules of action (cf. particularly *Ep. to the Romans*, 13. 4), but rather to the essential foundation itself of penal power and of its immanent finality. This in turn is as little determined by the conditions of time and culture as the nature of man and the human society decreed by nature itself. But, whatever the attitude of positive human law on this problem, it is sufficient for Our present purpose to make clear that in any total or partial remission of punishment, the vindictive penalties (no less than the medicinal) can, and even should, be taken into consideration.

Exterior element

Arbitrariness cannot prevail in the application of condonation. The good of the culprit, no less than that of the juridical community whose law he has culpably violated, must serve as a norm. Above both of these are the respect and excellence of the order established according to what is good and righteous. This norm requires, among other things, that, as is the case in the normal relations of men, one with another, so also in the application of penal power, there be considered not only strict law and justice, but also equity, goodness, and mercy. Otherwise there is danger that the '*summum ius*' be converted into '*summa iniuria*'. It is precisely this reflexion which gives rise to the thought that, in medicinal penalties, and also, within certain limits, in vindictive penalties, a remission of the punishment should be taken under consideration whenever there is moral certainty that the inherent purpose of the penalty has been obtained, that is, the true interior conversion of the guilty person, and a serious guarantee of its lasting character. The regulations of Canon Law in this matter (cf. Canon 2248, §§1 and 2, and Canon 2242, §3, of the Code of Canon Law) might serve as a model. These require, on the one hand, proof of the actual change of mental attitude in the culprit, and, on the other, do not provide for any automatic condonation, but rather make it depend on a positive juridical act of the competent authority. In the memorial presented by you, it is stated that civil penal law on this point apparently makes desirable a new development and a more elastic adaptation to just modern exigencies. This proposal may be good, although the requirements of civil penal law under various aspects differ from ecclesiastical penal law. In any event, the carrying out of any reform seems to require new theoretical clarifications and well-founded practical experimentation.

Interior element of deliverance from punishment

Along with the legal and technical aspect of deliverance from punishment, the same memorial also mentions another, completely different, but very real influence, which is exerted upon the culprit, and which, being a more profound, intimate release from punishment, cannot be passed over in silence. Naturally it is less pleasing to professional

jurists as such, although acceptable to them as 'men' and 'Christians'; it indicates an essential deepening or, one may prefer to say, a sublimation or 'Christianization' of the entire problem of the execution of penalties.

The example of innocent persons condemned

Punishment is looked upon, by its very nature, as an evil imposed on man against his will; hence it creates of itself a spontaneous defensive attitude on the part of the interior man. He feels himself robbed of the free disposition of himself and subjected to an extraneous will. Similar evils, but arising from other sources, frequently affect man, or he may even choose them by his own free election. As soon as spontaneous opposition to the suffering no longer exists, its oppressive and humiliating aspect disappears or is substantially diminished, even though the sensitive and painful element remains. This We have already had occasion to point out in Part II of Our present exposition. Very many people, even though innocent, are today thus oppressed and suffering; they suffer physically and morally in prisons and penitentiaries, in concentration camps, in places of forced labour, in mines, in quarries, to which they have been relegated by political passion or the arbitrary whim of totalitarian powers. They suffer all the miseries and all the sorrows—and sometimes even more—that can be inflicted upon true culprits according to law and justice. Those who, through no fault of their own, suffer such evils, are certainly not able to escape externally the pressure of force, but they can interiorly rise above all such things, sustained perhaps by naturally good moral motives, but much more easily and effectively by religious considerations, by the certainty that always and everywhere they depend on Divine Providence, which allows no person or thing to be taken from its grasp, and which, beyond the fleeting period of man's earthly life, possesses an eternity and an almighty power to set aright whatever has been unjustly suffered. It has a power to equalize again all things disarranged and hidden, to crush and punish all human tyranny. To the eyes of the Christian, there is ever present Our Lord, Who in His Passion experienced all the depths of human suffering and tasted all its bitterness, and, in obedience to the Father, for love of Him and out of loving compassion for men, willingly took upon Himself sorrow and ignominy, the cross and death. Strengthened by the example of the God-man, many of these innocent victims find in their suffering interior freedom and peace, and attain an interior deliverance from sorrow, even while the external affliction endures, through the way of faith, of love and of grace.

Charitable work of assistance to the condemned

Those who suffer through their own fault and feel themselves slaves of punishment may also attain the same end, and by the very same

way. We would wish to recall here what We have already said when speaking of the execution of punishment, concerning the spiritual circumstances of the person condemned to prison. Here We desire to consider how one can and should assist him to attain an interior victory and, consequently, an interior release from the evil of punishment. By faith and love and grace, clearness of vision and light can be given to his spirit, warmth and substance to his courage, strength and support to his weakness. Unquestionably, the convicted person could himself bring to maturity and completion such an elevation. Few, however, abandoned to their own devices, will be able to do so. They therefore need from others advice, assistance, sympathy, encouragement and comfort. But the one who undertakes such a task must draw forth from his own convictions and his own interior riches, that which he would communicate to the prisoner. Otherwise his words would be only sounding brass and tinkling cymbals (I Cor. 13. 1).

We have read with deep emotion what one of your members, the distinguished Professor Carnelutti, has written on the words which the Lord will pronounce at the end of time: 'I was in prison and you visited me . . . As long as you did it for one of these the least of my brethren, you did it for me' (St. Matthew 25. 36–40). What is here proposed as the ideal in the giving of oneself for the spiritual salvation and purification of the prisoner, goes beyond the new precept of the Divine Redeemer, 'Love one another', which was to be the evident mark whereby His disciples would recognize one another (St. John 13. 34–35); it is a question, in fact, of approaching the guilty one in such wise as to see, honour and love him in the Lord, and even so to liken oneself to him as to put oneself spiritually in the place of the man in convict's garb and detained in his prison cell, as the Lord said of Himself: 'I was in prison and you came to me' (St. Matthew 25. 36). All of this interior world, this light, and this goodness of Christ can give the condemned prisoner support and help, so that he may come forth from the wretched servitude of punishment and acquire once again freedom and inward peace.

Contribution of the community to deliverance

Furthermore, the words of the Lord place an obligation not only on those who have the immediate care of the condemned person, but also on the community itself, of which he is and remains a member. The community should see to it that it is disposed to welcome lovingly the man who comes forth from prison to freedom. This love should not be blind, but clearsighted, and, at the same time, sincere, helpful and discreet, such as to make possible his re-adaptation to social life, and a renewed consciousness of himself as free from guilt and punishment. The requirements of such a disposition are not based upon an Utopian blindness to reality. As has been noted, not all criminals are ready and

inclined to bear with the required process of purification, and perhaps the percentage of such is rather large; but it is still true that many others can be and are helped to obtain complete inward release, and for these especially, no Christian effort will ever be too much or too difficult.

May these considerations of Ours contribute with the richness of Christian thought towards revealing the true meaning, morally and religiously purified, of punishment, and with the outpouring of charitable assistance, may they help to make smooth for the condemned prisoner the way that must lead him to the longed-for release from guilt and punishment.

BOOK REVIEWS

ART AND MORALITY

Obscenity and the Law. By Norman St. John-Stevas. (Secker and Warburg. 25*s*.)

THE relationship between art and morality has always been a fascinating subject and one upon which opinions range between wide extremes. It is curious that in this field the virtue of moderation and the gift of compromise, frequently characteristic of the English, have often failed them with unhappy results to those who live by the arts. In modern times men of letters, as well as those upon whom they depend, have been the principal sufferers, and in *Obscenity and the Law* Mr. Norman St. John-Stevas, a member of the English Bar, has examined the principles, in so far as these can be detected, upon which the state has attempted to discipline them. Mr. St. John-Stevas writes a good deal better than most lawyers, and his legal scholarship qualifies him for the present purpose in a way that purely literary competence could never attain. The result is a book of absorbing interest and considerable importance.

The method adopted is excellently ordered, beginning with a historical review, for which the author's research has been admirably complete and conscientious, and proceeding by way of an examination of the leading cases following Lord Campbell's Obscene Publications Act of 1857 to an objective consideration of all the more recent prosecutions.

The fate of the books selected for attack was at first largely uniform. The proceedings against *The Well of Loneliness* by Radclyffe Hall afford an illustration. This sympathetic study of homosexuality among women was recognized on publication to be a serious contribution to a difficult theme and to its merits as literature thoughtful opinion was favourable. Authority, however, intervened, as a result of an agitation promoted by the *Sunday Express*, and summary proceedings before the Chief Magistrate at Bow Street resulted in an order for destruction, this in spite of a defence put forward by Mr. Norman Birkett and supported (silently, for Sir Chartres Biron declined to receive their evidence) by a large number of the most prominent

literary figures of the day. Thereafter publishers, whose productions were seized by the police, usually kissed the rod and escaped with a mitigated penalty. In 1954, however, Mr. Frederic Warburg, having published *The Philanderer*, elected trial by jury and on a fortunate day came before Mr. Justice Stable at the Old Bailey. That learned judge's summing up has achieved a fame which needs no recognition here and which is increasingly acknowledged by those lawyers who consciously labour under the all too often deserved reproach of illiberality in their profession. Those in search of entertainment in this connexion may be referred to the considered judgement of Mr. Justice Younger, as he then was, in Glyn *v.* Western Feature Film Company, reported in 1916 Chancery Division, Vol. I, a notable example of judicial severity which denied to Mrs. Elinor Glyn the normal protection of copyright for her novel *Three Weeks*, which the judge clearly thought should be 'altogether suppressed'.

Mr. Justice Stable's enlightened approach has not always been followed, however, and in a later case the jury were influenced from the bench to convict by the reflexion that 'the minds of a callow youth or a girl just budding into maidenhood' must be protected from pollution.

As Mr. St. John-Stevas points out, the legal principle applied in both these criminal cases was identical. The difference lies in the judicial approach to the jury who must apply it. The motives of the defendants being irrelevant, the substantial question in each case is whether or not the matter charged is obscene, whether, that is to say, it has the 'tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands the publication may fall'. The issue is at large for the jury and no verdict can be questioned or scanned for reasons. A 'strong' jury therefore, or a jury influenced by a 'strong' judge, may go either way. In the result it may happen that those responsible for a work of serious purpose suffer conviction at the hands of people indifferent to their aims. Nor should we ignore the human failing which leads men to be censorious in public when erected to positions of prominence, a failing by no means confined to juries.

History and recent experience in this branch of the criminal law bring home the truth that religious chaos is only part of the price the English pay for freedom from spiritual authority. These periodical outbreaks of prudery spring from a muddled righteousness which fails to distinguish between sin and crime and prompts the State to spasmodic invasions into the sphere of private conscience. For its purpose the State can only dispose penal sanctions. It has no other weapon. Nor can it control the booms and slumps of puritanism. So voluntary submission to spiritual direction in morals has been exchanged for no direction at all, for an involuntary subjection to intermittent gusts of shocked pro-

priety (in the worst sense of the word) from quarters in which little in the way of ascertainable principle, whether in art or ethics, can be discerned.

These reflexions will probably not advance the cause of the Obscene Publications Bill which was introduced into the House of Commons in March of last year by Mr. Roy Jenkins, a private member identified with a committee now presided over by Sir Gerald Barry and set up by the Society of Authors. Mr. St. John-Stevas also belongs to this committee and has had much to do with the Bill which appears as an appendix to his book. This Bill seeks to confine the State to its proper objective, the prohibition of commercial pornography, which is much more easily recognizable as such than is sometimes contended. On this basis the function of the court will be plainly defined, suited to the judicial purpose and generally useful, indeed necessary. Meanwhile the English genius in the art of letters will be allowed to flourish unchecked by the capricious incidence of the worst kind of censorship imaginable. The argument, objectively presented, commends itself and it is not the least of the merits of this excellent book that the conclusion appears irresistible.

RICHARD ELWES

SOCIETY AND SANITY

The Sane Society. By Erich Fromm. (Routledge & Kegan Paul Ltd. 25*s*.)

IN this further volume in the Series 'The International Library of Sociology and Social Reconstruction' entitled *The Sane Society* Dr. Fromm gives a penetrating and critical analysis of contemporary western society. His criticisms arise from the humanistic conception of man standing at the centre of a world, served by its political and economic institutions which contribute to his own development as a rational being who loves his fellow human beings. Existing institutions do not tend towards man's full development, but, on the contrary, have dominated him, and he has become subject to them. As Emerson has written, 'things are in the saddle and ride mankind'.

Having made great scientific discoveries in the recent past and notably, of course, that of atomic power, man is now dominated by them and puts his trust in them to solve his problems for the future. A part of man's mind is concerned with scientific invention and has developed whilst a more important part, concerned with his ability to reason and therefore with his moral life, has remained static. Though his intelligence has created great material power he lacks the wisdom to use it.

Society today is in danger of becoming insane because man is

alienated from the fruits of his own labour, both from government and from himself. He lives in an unreal world in which profit and material comfort are all important, and consequently he has lost touch with the true purpose of his life, which, Dr. Fromm argues, is his development as a complete human being. If this present trend continues and we are neither atomized nor communized we shall become clever, comfortable machines, worshipping an economic God of our own creation, and man, who is now merely moribund, will then be completely dead.

Between capitalism and its logical conclusion in a society similar to that which Mr. Huxley described in *Brave New World*, to Communism or Mr. George Orwell's *Vision* of 1984 and the cosmic suicide of the hydrogen bomb, there is a chance for mankind to create a sane society 'in which no man is a means towards another's end, where man is the centre of the world and all economic and political activities are subordinate to his growth'. The first move must be to avert the war threat by taking responsibility for the lives of all men and developing on an international scale what most countries have developed nationally, namely a relative sharing of wealth and a new and juster division of economic resources.

The Sane Society is a valuable book because it depicts the weaknesses of contemporary western civilization from the humanistic standpoint, and further because it has definite concrete suggestions for remedying that situation. Dr. Fromm outlines practical schemes in the political and economic sphere to counteract this process of alienation, and emphasizes that these schemes must be accompanied by cultural changes if they are to be effective. He recommends decentralization in government and industry in order to bring the individual into touch with economic and political problems; small bodies should meet weekly to discuss politics; while some measure of joint management should be introduced in industry in order to give the worker a sense of purpose and responsibility. But it is emphasized that this policy is not intended to convert the worker to the capitalist system merely because it has been found inexpedient to exclude him any longer; neither is it intended, by appealing through psychological persuasion and propaganda directed to his desire for profit and instinct for group identification, to instil into him a mere team spirit, but rather it is expressly designed so that he should develop a world spirit, based on man's responsibility for man irrespective of colour, creed or country.

However, desirable as it is that economic and political institutions should be subordinated to the aim of man's full development of his powers, it is perhaps unwise to make this development the ultimate end of human existence. It is frightening at this point in history to pin, as Dr. Fromm does, all one's faith in man's 'reason, good-will and sanity', and whilst admiring his penetrating appraisal of contemporary western society and welcoming his suggestions for practical reform, it is not

possible that man's development for man's sake is in itself a satisfactory end to human existence.

Society, says Dr. Fromm, should conform with the needs of man—such needs as arise from the condition of his existence, because the necessity for man continually to attempt to solve the conflict that exists between his instinctive passions and his spiritual needs and to find higher forms of unity with nature and with his fellow man, is after all the source of all the psychic forces that motivate him. Man cannot remain static—there is an inescapable alternative between regression and progression, between a return to an instinctive animal existence and a progress towards a rational existence. The latter course is frightening because it involves doubting, making an effort and suffering in order to arrive at a higher solution, whereas the former leads directly to mental sickness.

Dr. Fromm's concept of alienation is a regression by modern man to the apparent security of an irrational authority in the form of nation, dictator or creed, and quite apart from its pathological effect on the individual it is dangerous to peace because the objectivity of people's attitude to other people outside their clan or country is so easily warped by subjection to their authority.

Dr. Fromm's *Sane Society*, based on his conception of the needs of men, is certainly superior to an alienated society dominated by 'things', but it is hardly the highest state in which man can or should exist. It is doubtful whether man's internal and external conflicts could ever ultimately be resolved by any unity with nature and his fellow man alone, as it is also doubtful that such unities are the source of all psychic forces that motivate him. The evidence from the world's more rational societies such as the Greek City States and contemporary western democracies seems to show that man is not self-contained, that he cannot rely on his unity with other men to satisfy him, and that belief in his development in this world as a sole end to his existence leads to despair. This has been the theme which has recurred constantly in the atheistic existentialists writing in France and on the Continent. (For, after all, we can only attain to *union* with God, but at the highest point of human development all we can achieve in our contemporary society is *unity* with our fellow men.) Since the beginning of history, man has looked to a higher authority as his standard of reference without which morality is meaningless, as a safeguard against failure, which as Machiavelli pointed out can arise through sheer bad-luck, as an explanation of suffering and as the natural road to sanity. The most important psychic force which motivates man is now, and always has been, caused by his innate desire to find union with God, and as the conflicts in man can only be solved through union with God, perhaps those of the world can only be solved through the unity that can result from the acceptance and practical interpretation of the truth of man's creation

by God and equality before Him—a fact which Dr. Fromm refuses to either acknowledge or accept . . . though we find due cause for reflexion in his statement that 'those who believe in God should express their faith by living it, those who do not believe by living the precepts of love and justice and—waiting'.

ANTONY HORNYOLD

PSYCHIATRY AND THE LAW

The Psychology of the Criminal Act and Punishment. By Professor Zilboorg. (Hogarth Press, 10*s.* 6*d.*)

PROFESSOR ZILBOORG is a distinguished psychiatrist, and historian of psychiatry; he is also a convert to Catholicism and an Analyst of the Freudian school. In a recent book, he has discussed the different points of view of the Law on the one hand, and Psychiatry on the other.

He tells us from the beginning that he will not emulate the German Professor who said at the beginning of a lecture on the history of religion: 'Gentlemen, some people believe in God, and some do not. We in this course will take the middle ground.' The subject of crime and punishment is a very serious one, and has always been invested with the zeal of the reformer, for, as the author says: '. . . ever since man began to punish man, there have been those who were ready to die for the right to punish, and those who were ready to die with the criminal for the right to save the condemned'.

There is no doubt that Professor Zilboorg stands on the side of the angels, but he tries to understand both sides, and his whole object is to bring about that rapprochement and co-operation which is still sadly lacking between Jurist and Psychiatrist. The difference comes from the training and outlook of each, which are in many ways opposed; the lawyer is concerned with the transgression and the punishment thereof, while the doctor looks to the transgressor, and his function is, or should be, curative. The former, in fact, in the role of prosecutor at any rate, 'has a professional hostility against the violator as well as the violation of the Law. He is engaged in a kind of game or contrast, to win for his side'. A criminal trial is a fight between adversaries: Prosecution and Defence; the Judge interprets the Law which is basically punitive, the Jury acting as a corrective, representing in a way the compromise between the two aspects of the 'eternal struggle'.

The psychiatric witness, in the present dispensation, represents a still more uneasy compromise between the professional would-be scientific expert, and the witness for or against the defence, dragged willy-nilly into the 'game'. He is caught in the toils of the McNaughten Rules, and asked to pronounce on the question of responsibility—which is a legal and not a medical question. He has to meet a demand 'based

upon an artificial definition of a non-existent condition called legal insanity'. To support this strong opinion we can quote Sir Russell Brain in a letter to *The Times* in 1952 on the Straffen case. He, too, says: 'Insanity has no clear medical or legal meaning' and he adds: 'What of those who know what they are doing, and that it is wrong' (the McNaughten criterion) 'but through medical disease fail to control their actions?' In other words: 'the "nature and quality of the act" has no meaning whatsoever unless we bring it into harmony with the total personality of the criminal, even and particularly if it is the insane harmony of a pathological mind'. To the Reason as the arbiter of action, must be added the Will and the Emotions. In fact a Royal Commission on the subject suggested in 1953 that to 'defect of Reason' should be added 'disorder of Emotion'.

The latter basis for judgement may well appear to many to be the opening of the floodgates of sentimentality; criminal law still regards mankind, with a kind of divine prerogative, as divided into good and bad. Modern psychology cannot do this; it must study the individual in his totality, and may thus appear to be finding excuses for the wicked. Especially is this so because the medical psychologist is not working in the traditional method of science; '. . . he has no instruments by means of which he can measure the degree of mental life, the weight of charity, the kilometres of will power.' He is working out a jigsaw puzzle. No wonder that the logical lawyer is often scornful.

What we have to remember is that a criminal act, to whatever extent it may or may not be anti-social, is essentially an aggressive act; the disorder of emotion is mainly in the sphere of aggression, which is universal and protean. Repressed aggression can lead to many things, the extremes of which are suicide and murder. In lesser degrees all of us have aggressive feelings and fantasies, which are luckily never 'acted out' in full, but they colour our views on most matters and certainly the beliefs of mankind that we take for granted: 'We have only our inalienable faith that man can frighten man into decency, goodness, or at least moral neutrality.' A criminal about to be electrocuted expressed a contrary opinion: 'The hot seat will never stop a guy from pulling a trigger.'

That Society has a right to punish, and that crime is thereby halted, has been accepted for centuries. Some theologians have denied that human punishment for crime is of divine sanction and origin. St. Thomas holds that punishment is for the reformation of the criminal, but that to be effective it must be *accepted* by the one on whom punishment is meted out. This brings in an aspect of it which would seem to fit in with modern ideas of what we may call auto-reformation. We are on the eve, perhaps, of a new change on the technique of application, and the practical utilization, of punishment.

We can only become more humane, however, in so far as we appre-

ciate and defend the freedom of the individual; we are thus able to identify ourselves much more with others. The opposite happens if the State is deified: 'When in the history of mankind there is an increase of self-righteousness in the powers that be, there is an increase in cruelty.'

In every individual criminal there is somewhere the sense of guilt, and the possibility of a sense of community. These have been stunted or twisted but not destroyed. The criminal is also a person who responds to the aggression of penology with more of his own aggression. What we have to do is to lessen that aggression, to mobilize the remnants of an 'inner justice', to bring about a form or self-punishment, an accepted purgatory, which in the end will be far more effective than our blundering efforts at reform through alienation from life and external sanctions. This may all seem very utopian at present, when we still hesitate to abolish the barbarism of hanging, but it may not seem so much longer: 'The whole mass of the complex and burdensome problems of modern criminology is destined to be revised in the light of modern psychology.'

The psychiatrist then 'finds himself touching upon the very secret of human values; he discovers that insight into the deeper psychology of man brings him into close contact both with the intimate sources of human brutality, and the loftiest problems and sources of human morality'. He should be humble before these mysteries, but he is also in danger of pride.

Psychiatrists are allowed in the Court as experts, but their position is far from happy, they are 'but pawns in a conventional system of superannuated rules laid down for psychological expert testimony'. 'The psychological atmosphere surrounding the psychiatrist in Court is an unpleasant one, and it does not propitiate the work of honest science or real justice.' And again: 'The principle of an expert for each side is a corrupting immoral principle.' The remedy, namely the provision of a panel of trained psychiatrists whose evidence shall be available to both sides, would seem to be a simple one, but nothing is simple, and no change can be rapid in this sphere of human affairs.

In this condensed account, largely a paraphrase, of Dr. Zilboorg's views, the impression may have been conveyed that he is, so to speak, 'agin the Law', but this would not be a true impression. He accepts, of course, the necessity of the Law and all its institutions, but he tries to expose their weaknesses, and to stress the full force of the impact which medical psychology is making upon them. In so doing he may indeed be over-estimating the perfectibility of the criminal and the power of psychology to bring about a revolution in penology. He admits to be writing as an enthusiast, but he would be a poor psychologist if he did not appreciate the real difficulties of his task.

CHARLES BURNS